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## BEFORE THE ARIZONA CORPORATION COMMISSION

## COMMISSIONERS

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TOM FORESE  
ANDY TOBIN

Arizona Corporation Commission

DOCKETED

SEP 23 2016

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E-01749A-16-0337

IN THE MATTER OF THE APPLICATION OF  
GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC. TO AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND TO  
TRANSFER CERTAIN OF ITS ASSETS TO THE  
TOWN OF THATCHER.

Docket No. E-01749A-16-\_\_\_\_

## APPLICATION

Pursuant to A.R.S. §§ 40-281, 40-285, and 40-374 as well as A.A.C. R14-2-202(B) and  
R14-2-212(I), Graham County Electric Cooperative, Inc. ("GCEC" or the "Cooperative"), in  
support of its Application, states as follows:

1. GCEC is an Arizona non-profit, electric distribution cooperative. GCEC  
incorporated in 1945 and commenced operations in 1946. It currently supplies electric service to  
approximately 6,000 members in Graham County, Arizona.

2. In Decision No. 33006, dated April 6, 1961, the Commission issued a Certificate  
of Convenience and Necessity ("CC&N") authorizing GCEC to operate and maintain an  
electrical system in Graham County south and east of the San Carlos Apache Indian Reservation,  
but excepting the areas located within the corporate limits of the towns of Thatcher and Safford.

3. The Town of Thatcher ("Thatcher" or the "Town") is a municipality organized  
and existing under the laws of the State of Arizona. It operates an electric distribution system  
within its Town limits.

1           4.       Prior to 1946, Arizona General Utilities Company ("AGU") was the supplier of  
2 electricity to these areas of Graham County. In 1946, GCEC, Thatcher and the City of Safford  
3 jointly purchased the physical assets of AGU.

4           5.       In connection with that joint purchase, GCEC, Thatcher, and Safford entered into  
5 an agreement (the "1946 Agreement") providing for the acquisition of all of AGU's facilities  
6 within Graham County. Thatcher and Safford acquired the facilities within their municipal limits  
7 and GCEC acquired the remainder.

8           6.       The 1946 Agreement also included a provision addressing the future annexation  
9 rights of the municipalities and their related right to acquire electrical facilities from the  
10 Cooperative. Subsequent annexations resulted in disputes between the parties, including  
11 litigation between GCEC and Safford.

12          7.       In 1973, GCEC and Thatcher entered into a revised agreement (the "1973  
13 Agreement") resolving some, but not all, of the disputes relating to the Town's acquisition of  
14 distribution facilities from the Cooperative. For example, the 1973 Agreement did not address  
15 the treatment of facilities used to serve both Thatcher customers and GCEC members, nor did it  
16 contain any dispute resolution provisions.

17          8.       Recently, Thatcher issued notices to GCEC identifying new areas of annexation  
18 (the "Annexation Area") and advising the Cooperative of the Town's intent to acquire the  
19 electrical facilities in the Annexation Area. In response to the notices, GCEC and Thatcher  
20 negotiated and entered into a Distribution Wheeling and O&M Agreement (the "DW & OM  
21 Agreement"), which is intended to address the issues left unresolved by the prior agreements. A  
22 true and correct copy of the DW & OM Agreement is attached hereto as Exhibit 1.

1           9.       The DW & OM Agreement contains several key components relevant to this  
2 Application. First, GCEC will acquire Thatcher's existing distribution system for \$1 and provide  
3 distribution wheeling services to Thatcher.<sup>1</sup> Second, Thatcher will expand its service territory to  
4 provide electric service to all its current retail customers and to the Cooperative members located  
5 within the Annexation Area.<sup>2</sup> The DW & OM Agreement sets July 1, 2017 as the target date for  
6 GCEC's acquisition of Thatcher's system and transfer of the Cooperative customers within the  
7 Annexation Area to Thatcher.<sup>3</sup>

8           10.      The DW & OM Agreement benefits all parties involved, including the  
9 Cooperative members who will transfer to Thatcher as well as those who will remain with  
10 GCEC. First, it resolves the disputes arising from the 1946 and 1973 Agreements by  
11 establishing a more orderly, mutually beneficial, and rational allocation of electric service  
12 responsibilities within the Town limits as they have expanded and as they will continue to  
13 expand from time to time in the future. Additionally, in the event of future disputes between  
14 GCEC and Thatcher, the DW & OM Agreement includes a comprehensive dispute resolution  
15 process.<sup>4</sup> Other benefits include (1) a future income stream to the Cooperative for providing the  
16 Town with distribution wheeling services<sup>5</sup> and (2) detailed cost-sharing provisions for additions,  
17 modifications, and upgrades to the system acquired from Thatcher.<sup>6</sup> Finally, according to  
18 Thatcher's initial analysis, the customers moving from GCEC to Thatcher are anticipated to see  
19 reductions in their electric bills.

20  
21 <sup>1</sup> See DW & OM Agreement §§ 2.10, 9.1, and 13.2.

22 <sup>2</sup> See DW & OM Agreement §§ 2.10, 12.8, and 15.3.

23 <sup>3</sup> See DW & OM Agreement §§ 2.11 and 4.33.

24 <sup>4</sup> See DW & OM Agreement § 33.

<sup>5</sup> See DW & OM Agreement § 16.

<sup>6</sup> See DW & OM Agreement § 12.

11. Thatcher's ability to implement the provisions of the DW & OM Agreement was contingent upon obtaining voter approval to increase its spending limit,<sup>7</sup> which it received in the recent August 30, 2016 election.

12. The purpose of this Application is to obtain certain approvals from the Commission necessary for GCEC to implement the DW & OM Agreement.

13. First, because Thatcher will serve all the retail customers within the Annexation Area, that area will need to be deleted from GCEC's service territory as defined by its CC&N. Also, the Cooperative will need Commission authorization to transfer its metering assets within the Annexation Area to the Town. The legal description of the Annexation Area is attached hereto as Exhibit 2.

14. Additionally, in order to ensure a smooth customer transition, GCEC will need Commission authorization to share certain customer-specific information with Thatcher.

15. Finally, GCEC's current Commission-approved rates include a \$10 disconnect fee. Because the Cooperative's customers located within the Annexation Area are transferring to Thatcher as part of the DW & OM Agreement, GCEC requests Commission authorization to waive the disconnect fee for the transferred customers.

Having fully stated its Application, GCEC requests that the Commission enter its Order in time for the July 1, 2017 transfer date:

1. Modifying the Cooperative's CC&N to remove the Annexation Area from GCEC's service territory;

2. Authorizing GCEC to transfer its metering assets within the Annexation Area to Thatcher;

<sup>7</sup> See DW & OM Agreement § 6.2.



3. Waiving the restrictions under A.A.C. R14-2-203(A)(2) to permit the Cooperative to share with Thatcher specific information about the customers located in the Annexation Area;

4. Authorizing GCEC to waive the \$10 disconnect fee approved by the Commission in Decision No. 70289 in connection with the customers transferred to Thatcher pursuant to the DW & OM Agreement; and

5. Granting GCEC such other and further relief as the Commission deems appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of September, 2016.

GALLAGHER & KENNEDY, P.A.

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**Original and 13 copies** filed this  
23<sup>rd</sup> day of September, 2016, with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

10430-0015/5599040

**EXHIBIT 1**

**DISTRIBUTION WHEELING AND O&M AGREEMENT**

**Between**

**GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.**

**and**

**THE TOWN OF THATCHER, ARIZONA**

**February 3, 2016**

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## **DISTRIBUTION WHEELING AND O&M AGREEMENT**

### **1. PARTIES:**

The Parties to this Distribution Wheeling and O&M Agreement ("DW & OM Agreement") are Graham County Electric Cooperative, Inc. ("**GRAHAM**") and the Town of Thatcher, Arizona, a municipality organized and existing under the laws of the State of Arizona ("**THATCHER**"), individually referred to as a "Party" and collectively as the "Parties"; Arizona Electric Power Cooperative, Inc. ("**AEPCO**") and Southwest Transmission Cooperative, Inc. ("**SWTC**") are acknowledging this DW & OM Agreement.

### **2. RECITALS:**

**2.1.** GRAHAM owns, operates and maintains 12.47 kV distribution facilities and 69 kV transmission facilities, including certain facilities in the vicinity of THATCHER and within THATCHER's boundaries as they may exist from time to time.

**2.2.** THATCHER owns, operates and maintains a 12.47 kV electrical distribution system, defined herein as the Existing THATCHER System.

**2.3.** THATCHER and AEPCO are parties to the AEPCO-THATCHER Scheduling Agreement, by which AEPCO provides scheduling of THATCHER Resources.

**2.4.** THATCHER and SWTC are parties to the SWTC-THATCHER Contract, by which SWTC provides transmission service to THATCHER for delivery of THATCHER Resources to GRAHAM Point(s) of Receipt.

2.5. GRAHAM and THATCHER are parties to the GRAHAM-THATCHER Transmission Wheeling Agreement, by which GRAHAM provides transmission service to THATCHER for delivery of THATCHER Resources from GRAHAM Point(s) of Receipt to GRAHAM Point(s) of Delivery to THATCHER.

2.6. GRAHAM and THATCHER are parties to the 1973 Agreement, under which THATCHER may give three (3) years' notice to GRAHAM to purchase GRAHAM's distribution facilities in any territory annexed by THATCHER.

2.7. Pursuant to the 1973 Agreement, THATCHER so noticed GRAHAM in 2009 for purchase of certain GRAHAM facilities in one area annexed by THATCHER ("First THATCHER Notice"), and again in 2011 for purchase of certain GRAHAM facilities in a second area annexed by THATCHER ("Second THATCHER Notice"), which together constitute the "Notice Expansion Area."

2.8. Prior to the closing on the purchase of GRAHAM facilities pursuant to the First THATCHER Notice, and in conjunction with exploring alternatives to the pursuit of the arrangements to close on the GRAHAM facilities pursuant to the Second THATCHER Notice, the Parties agreed to explore the viability of entering into this DW & OM Agreement.

2.9. As a first step toward this DW & OM Agreement, GRAHAM and THATCHER entered into the Interconnection Tie Agreement, to establish a new temporary point of system interconnection ("Interconnection Tie"), between GRAHAM's distribution system and the Existing THATCHER System, in order for GRAHAM to provide emergency assistance to the Existing THATCHER System.

2.10. GRAHAM and THATCHER wish to provide for GRAHAM to purchase the Existing THATCHER System and assume responsibility for ownership, operation and maintenance of the THATCHER System and for GRAHAM to provide distribution wheeling services over the THATCHER System to allow THATCHER to serve all retail electric customers within the THATCHER Service Area: (a) as it currently exists (the "Existing THATCHER System Area"); (b) as it would exist after the expansion contemplated in the THATCHER Notices to GRAHAM (the "Notice Expansion Area"); and (c) as it may exist after additional annexations by THATCHER that may occur after the date hereof and notice is given pursuant to Section 11 hereof in any Future Expansion Area.

2.11. The Parties anticipate that: (a) the Existing THATCHER System will be transferred to GRAHAM on the Transfer Date; and, (b) all customers of GRAHAM located within the Notice Expansion Area will become customers of THATCHER, effective on the Transfer Date.

2.12. The Parties intend that the Interconnection Tie become a part of the improvements made to effectuate this DW & OM Agreement.

**3. AGREEMENT:**

In consideration of the recitals set forth herein and the mutual covenants herein contained, the Parties hereto agree as provided herein.

**4. DEFINITIONS:**

4.1. "1973 Agreement" refers to the Agreement between THATCHER and GRAHAM, dated September 17, 1973, providing a mechanism for the purchase by THATCHER of certain GRAHAM distribution facilities located in territory annexed by



THATCHER, as such Agreement was amended by the First Amendment to the Graham/Thatcher Agreement, dated January 12, 2011.

4.2. "ACC" refers to the Arizona Corporation Commission.

4.3. "ACC Approval" refers to an ACC Decision approving the application to be filed by Graham with the ACC pursuant to Section 5.2.

4.4. "AEPCO-THATCHER Scheduling Agreement" means the Scheduling and Trading Services Agreement, between THATCHER and AEPCO, dated December 19, 2006.

4.5. "Authorized Representative" refers to a representative designated from time to time by a Party to work with the designated representative of the other Party and having the authority of such Party to implement the agreements of the Parties set forth in this DW & OM Agreement.

4.6. "CFC" refers to the National Rural Utilities Cooperative Finance Corporation.

4.7. "CC&N" refers to GRAHAM's ACC-approved Certificate of Convenience and Necessity.

4.8. "DW & OM Agreement" refers to this Distribution Wheeling and O&M Agreement.

4.9. "Early Termination Date" refers to the date this DW & OM Agreement is terminated pursuant to Section 6.

4.10. "Existing THATCHER System" refers to the THATCHER System currently used to serve THATCHER's electric customers within the Existing THATCHER System Area, which is depicted on the attached **Exhibit "B"**.

**4.11.** "Existing THATCHER System Area" refers to the geographic area where THATCHER provides retail electric service using the Existing THATCHER System, which is depicted on the attached **Exhibit "B"**.

**4.12.** "Expansion Date" refers to the date that a Future Expansion Area becomes part of the THATCHER Service Area pursuant to a Future Expansion Area Notice, as provided in Section 11.

**4.13.** "Future Expansion Area(s)" refers to the geographic areas subject to a Future Expansion Area Notice provided pursuant to Section 11.1.

**4.14.** "Future Expansion Area Notice" refers to a three (3) year written notice of intent to provide retail electric service to customers in an annexed Future Expansion Area provided pursuant to Section 11.1.

**4.15.** "GRAHAM" refers to Graham County Electric Cooperative, Inc.

**4.16.** "GRAHAM Point(s) of Delivery" refers to point(s) of delivery specified in Exhibit B of the GRAHAM-THATCHER Transmission Wheeling Agreement.

**4.17.** "GRAHAM Point(s) of Receipt" refers to point(s) of receipt specified in Exhibit B of the GRAHAM-THATCHER Transmission Wheeling Agreement.

**4.18.** "GRAHAM-THATCHER Transmission Wheeling Agreement" refers to the Firm Power Wheeling Agreement, between GRAHAM and THATCHER, dated January 12, 2011.

**4.19.** "Interconnection Tie" refers to the 12.47 kV point of system interconnection between GRAHAM and THATCHER, as depicted in Exhibit A to the Interconnection Tie Agreement.

**4.20.** "Interconnection Tie Agreement" refers to the Interconnection Tie Agreement, dated June 24, 2013, between GRAHAM and THATCHER, as amended September 30, 2013.

**4.21.** "Interconnection Tie Point(s) of Delivery" refers to the existing metering points at the "Interconnection Tie" and to the metering points at any additional point(s) of interconnection between GRAHAM and the THATCHER System established hereunder at 12.47 kV interconnection ties. The Interconnection Tie Point(s) of Delivery, which are illustrated on the attached **Exhibit "F"**, initially are expected to be the following six points: (a) Daily Estates; (b) Quail Ridge; (c) 8<sup>th</sup> Street; (d) 1<sup>st</sup> Avenue; (e) Reay Lane; and (f) New Thatcher Substation.

**4.22.** "New Thatcher Substation" refers to the existing 69 kV/12.47 kV substation currently owned by THATCHER, which is the current Point of Delivery under the GRAHAM-THATCHER Transmission Wheeling Agreement.

**4.23.** "Notice Expansion Area" refers to the areas identified by THATCHER for purchase pursuant to the First THATCHER Notice and the Second THATCHER Notice, which are depicted on the attached **Exhibit "B"**.

**4.24.** "Profiled Meters" refers to discrete retail meters that the Parties have identified as uneconomical to justify an "Interconnection Tie Point(s) of Delivery." The initial list of "Profiled Meters" is included in **Exhibit "E"**, which shall be updated as provided in Section 14.5.4.

**4.25.** "Scheduling Month" refers to the next calendar month. For example, on June 25, 2016, the term "Scheduling Month" would mean July 2016.

4.26. "SWTC-THATCHER Contract" refers to the Service Agreement for Network Integration Transmission Service, effective January 1, 2011, between SWTC and THATCHER, for the delivery of THATCHER Resources to GRAHAM Point(s) of Receipt.

4.27. "THATCHER" refers to the Town of Thatcher, Arizona.

4.28. "THATCHER Notices" refers to the First THATCHER Notice and the Second THATCHER Notice, copies of which are attached as Exhibit "A".

4.29. "THATCHER Resources" refers to Navajo Generating Station power and energy; Parker-Davis Project power and energy; the Salt Lake City Area Integrated Projects (SLCA/IP) firm entitlement, including WRP (Western Replacement Power), CDP (Customer Displacement Power), including any redistribution under the Integrated Scheduling Agreement, and the Integrated Federal Resource and Power Transaction Contract, which THATCHER is entitled to purchase from Western Area Power Administration ("Western"); Boulder Canyon Project power and energy, including layoffs and exchanges of power under the Resource Exchange Program, Boulder Canyon Project firming power, Arizona Power Authority ("APA") firming power, and adjustments to APA power from its scheduling entity arrangements, all of which THATCHER is entitled to purchase from APA; power and energy THATCHER is entitled to purchase pursuant to the Power Purchase Agreement by and between Sempra Generation, n/k/a Sempra U. S. Gas & Power LLC, and the Southwest Public Power Resources Group, dated June 30, 2011, including any layoffs, pooling or exchanges of such power; and energy, and power and energy from any other sources.

**4.30.** "THATCHER Service Area" refers to the geographic areas within the Existing THATCHER System Area and the Notice Expansion Area. Additionally, pursuant to Section 11, the THATCHER Service Area may be expanded to include any Future Expansion Area. A map depicting the Existing THATCHER System Area and the Notice Expansion Area is attached as **Exhibit "B"**.

**4.31.** "THATCHER Supplied Load Profile" refers to a proxy for one additional "Interconnection Tie Point(s) of Delivery," determined pursuant to Section 14.5.

**4.32.** "THATCHER System" refers to the New Thatcher Substation and the 12.47 kV electrical distribution facilities that have been paid for by THATCHER and that are used to serve THATCHER's electric customers within the THATCHER Service Area, including but not limited to, all upgrades, improvements, betterments, and additions to and replacements of the THATCHER System made pursuant to this DW & OM Agreement that are paid for by THATCHER, and all licenses, right-of-ways, easements and personal property necessary or convenient for the operation of the THATCHER System.

**4.33.** "Transfer Date" refers to the date that THATCHER transfers the Existing THATCHER System to GRAHAM as provided in Section 9, which shall be the later of: (a) thirty (30) days following ACC Approval, or (b) July 1, 2017, or the first day of any month prior to July 1, 2017 that the Parties mutually agree in writing that all arrangements necessary to accomplish the Transfer Date have been accomplished.

## **5. EFFECTIVE DATE, TERM AND REGULATORY APPROVAL:**

**5.1.** This DW & OM Agreement shall be effective upon the first date that it has been executed and delivered by GRAHAM and THATCHER, and acknowledged

by AEPCO and SWTC, provided that the Transfer Date shall not occur until ACC Approval has occurred.

**5.2.** Following the execution, delivery and acknowledgment described in Section 5.1, GRAHAM shall file with the ACC an application concerning this DW & OM Agreement, including requests to modify GRAHAM's CC&N and to transfer retail customer meters to THATCHER. GRAHAM shall use commercially reasonable efforts to obtain all necessary ACC approvals concerning this DW & OM Agreement and any amendments hereto in order to accommodate the Transfer Date. THATCHER shall cooperate with GRAHAM to provide reasonable assistance in obtaining ACC Approval.

**5.3.** Upon the occurrence of ACC Approval, the Parties' rights and obligations under the 1973 Agreement shall be suspended for so long as this DW & OM Agreement shall remain in effect. Notwithstanding the foregoing, the 1973 Agreement (as amended herein by the modifications provided in Section 7.2.2) shall govern the acquisition of any Future Expansion Area as provided in Section 11, if the Parties are unable to reach agreement, pursuant to Section 11.2, as to any modifications needed to the DW & OM Agreement to reflect the value of any Future Expansion Area.

**5.4.** This DW & OM Agreement shall remain in effect until the earlier of: (a) the date that is five (5) years after written notice of termination is given by one of the Parties to the other; provided that, the earliest such notice may be given shall be no earlier than fifteen (15) years after the Transfer Date; or (b) the Early Termination Date, determined pursuant to Section 6. In the event the date of termination determined pursuant to Sections 5.4(a) or (b) above would occur on a day other than

the last day of a month, the effective date of the termination shall be on the last day of such month.

5.5. The GRAHAM-THATCHER Transmission Wheeling Agreement between GRAHAM and THATCHER shall remain in effect until the later of the termination date set forth in such agreement or the termination of this DW & OM Agreement pursuant to Section 5.4(a), above.

**6. EARLY TERMINATION:**

6.1. In the event that: (a) ACC Approval is denied; (b) the ACC Approval requires amendments to this DW & OM Agreement that are unacceptable to either GRAHAM or THATCHER in their respective sole and absolute discretion; or (c) the ACC Approval contains conditions that are unacceptable to either GRAHAM or THATCHER in their respective sole and absolute discretion, the Parties shall make good faith efforts to negotiate changes to this DW & OM Agreement that are acceptable to both Parties, as well as the ACC. If such negotiations are unsuccessful, either Party shall have the right to terminate this DW & OM Agreement. This DW & OM Agreement shall terminate upon the last day of the month (an "Early Termination Date") following the receipt of written notice that a Party is exercising its right to terminate pursuant to this Section 6.1, which notice shall be provided no later than sixty (60) calendar days following issuance of an ACC decision denying ACC Approval, or imposing conditions or requiring amendments to this DW & OM Agreement that are unacceptable to such Party. If the sixty- (60) calendar day period referred to in this Section 6.1 ends on a weekend or state or federal holiday, then such sixty- (60) calendar day period shall be extended to the next business day. Failure to

provide notice of termination within such sixty- (60) calendar day period shall constitute waiver of the right to terminate this DW & OM Agreement pursuant to this Section 6.1.

**6.2.** In order to implement this DW & OM Agreement, THATCHER must hold an election to increase its spending limitations. THATCHER agrees to hold an election to increase its spending limitation to an amount sufficient to allow it to perform its obligations under this DW & OM Agreement as soon as possible, but in no event later than November of 2016. If such increase is not approved by the THATCHER electorate prior to January 1, 2017, either Party shall have the right to terminate this DW & OM Agreement. This DW & OM Agreement shall terminate upon the last day of the month following a Party's receipt of written notice that the other Party is exercising its right to terminate pursuant to this Section 6.2.

**7. ACTIONS UPON TERMINATION:**

**7.1.** Upon early termination of this DW & OM Agreement pursuant to Section 6 hereof:

**7.1.1.** The 1973 Agreement shall be reinstated as amended by the modifications provided in Section 7.2.2 below and THATCHER shall have the right to pursue closing on the purchases of the GRAHAM distribution facilities that are the subject of the First THATCHER Notice and the Second THATCHER Notice in accordance with the 1973 Agreement without further notice to GRAHAM.

**7.1.2.** The purchase price for assets which are the subject of the First THATCHER Notice shall be \$2,167,178.75, and shall include the GRAHAM distribution facilities within the territory specified in such notice.



**7.1.3.** The purchase price for assets which are the subject of the Second THATCHER Notice shall be \$9,900,374.10, and shall include the GRAHAM distribution facilities within the territory specified in such notice.

**7.1.4.** GRAHAM shall file with the ACC as soon as reasonably possible its petition to modify GRAHAM's CC&N to facilitate such THATCHER purchases.

**7.2.** Upon termination of this DW & OM Agreement for any reason:

**7.2.1.** The Authorized Representatives of the Parties shall cooperate during the transition period between delivery of a notice of termination pursuant to section 5.4(a) and the termination date to plan and prepare for the transition of the THATCHER System to THATCHER to ensure that THATCHER has the proper infrastructure to accommodate all transferred loads within the then-current THATCHER Service Area.

**7.2.2.** For all future purchases of GRAHAM's facilities in areas annexed by THATCHER, the 1973 Agreement shall be reinstated. Upon reinstatement of the 1973 Agreement, the 1973 Agreement shall be modified as follows: (a) the Parties shall agree as provided in Section 7.2.3 on the treatment of facilities located in annexed areas that are used to serve both customers of THATCHER and members of GRAHAM; (b) to the extent possible, any then-existing interconnection ties shall become emergency back-up points of interconnection between GRAHAM and THATCHER that will be operated normally open; and (c) Section 33 of this DW & OM Agreement, providing for authorized representatives and a dispute resolution process, shall be incorporated by reference into the 1973 Agreement.

**7.2.3.** For all future purchases of GRAHAM's facilities in areas annexed by THATCHER, the following principles shall apply to facilities that are used to serve both customers of THATCHER and members of GRAHAM: (a) Graham shall retain ownership of all facilities operated at 69 kV or higher voltages, and use of those facilities by THATCHER shall be determined based on the GRAHAM-THATCHER Transmission Wheeling Agreement; (b) substations and feeders operated at voltages lower than 69 kV that are added during the term of this DW & OM Agreement shall be jointly owned, and the costs to own, operate and maintain such facilities shall be allocated between the Parties based on their respective load ratio share use of such facilities, or if owned by one Party, such Party shall provide wheeling to the other Party, with the wheeling charge based on the costs to own, operate and maintain such facilities; (c) operation and maintenance for jointly-owned facilities shall be performed by the Party with the majority of the load ratio share use of such facilities; and (d) each Party shall own any facility owned by that Party prior to the effective date of this DW & OM Agreement.

**7.2.4.** As of the effective date of the termination, except for any liens, encumbrances and liabilities that existed at the time of the Transfer Date, GRAHAM shall convey, free and clear of any liens, encumbrances and liabilities, the THATCHER System, to THATCHER, along with any licenses, right-of-ways and easements necessary to own, operate and maintain the THATCHER System. During the period that a notice of termination is in effect, GRAHAM shall maintain the THATCHER System in accordance with its then-current operations and maintenance practices prior to the transfer of the THATCHER System to THATCHER.

7.2.5. As of the effective date of the termination, THATCHER shall pay GRAHAM the depreciated cost of the facilities located within the THATCHER Service Area for which GRAHAM has paid, which does not include the Existing THATCHER System, the Interconnection Tie Agreement facilities paid for by THATCHER or any other facilities paid for by THATCHER. Notwithstanding the above, THATCHER shall pay GRAHAM for GRAHAM's facilities in any Future Expansion Area at the price provided in Section 11.4.

7.2.6. On or before the termination date, GRAHAM shall provide to THATCHER all existing one-line diagrams of the THATCHER System, together with any maps, as-built drawings and/or Global Information System mapping and inventory data in GRAHAM's possession relating to or identifying the components of the THATCHER System.

**8. EXHIBITS:**

Each Exhibit attached to this DW & OM Agreement and identified on its face as an Exhibit is, by this reference, incorporated in and made a part of this DW & OM Agreement as if set forth in its entirety wherever referenced in this DW & OM Agreement. Any Exhibit may be modified or replaced by a substitute Exhibit, upon the mutual written agreement of the Authorized Representatives as evidenced by their signatures on the substitute Exhibit, together with a statement of reference identifying the prior Exhibit for which it is substituted and the effective date upon which it supersedes such prior Exhibit.

**9. TRANSFER OF FACILITIES:**

9.1. In exchange for and in consideration of the agreement to provide services hereunder and the price of one dollar (\$1.00), on the Transfer Date, GRAHAM shall purchase from THATCHER, and THATCHER shall sell and convey to GRAHAM, the Existing THATCHER System, including without limitation, the New Thatcher Substation, the 12.47 kV distribution facilities, the step-down transformers and low voltage drops to the point of customer meters, and all licenses, right-of-ways and easements that are necessary for GRAHAM to provide service hereunder to THATCHER's customers within the geographic area served by the Existing THATCHER System. THATCHER warrants that there will be no liens, encumbrances or liabilities associated with the Existing THATCHER System as of the Transfer Date. In addition, on the Transfer Date, GRAHAM shall transfer to THATCHER, free and clear of any liens, encumbrances or liabilities, the customer meters and all facilities on the customer side of the point of delivery owned by GRAHAM for all customers served by GRAHAM on the Transfer Date in the Notice Expansion Area.

9.2. The Parties shall cooperate to execute and file such documents as may be necessary to effectuate the sale of facilities and transfer of associated rights contemplated in Section 9.1. THATCHER shall provide GRAHAM with: (a) a license, right-of-way or easement for all components of the Existing Thatcher System that are located on property owned by THATCHER or property over which THATCHER has a prescriptive or other right-of-way, including without limitation, the New Thatcher Substation, and (b) a bill of sale, with an attached list of facilities that constitute the Existing THATCHER System.

**9.3.** On or before the Transfer Date, THATCHER shall provide to GRAHAM all existing one-line diagrams of the Existing THATCHER System, together with any maps, as-built drawings and/or Global Information System mapping and inventory data in THATCHER's possession relating to or identifying the components of the Existing THATCHER System.

**9.4.** THATCHER and QWEST Corporation (now known as "CenturyLink") are parties to a License Agreement for Joint Use Attachment to Poles ("Pole Agreement"), dated September 9, 2008. THATCHER shall make a good faith effort to obtain CenturyLink's consent to assign THATCHER's rights, obligations and revenues under the Pole Agreement to GRAHAM. In the event that CenturyLink does not consent to assignment of the Pole Agreement to GRAHAM, GRAHAM shall be free to enter into a new contract with CenturyLink regarding pole attachments to the THATCHER System. GRAHAM also shall be free to enter into a new contract with CableOne regarding pole attachments to the THATCHER System.

**9.5.** If the ACC requires it of GRAHAM, THATCHER shall at its expense provide a written appraisal by a qualified appraiser of the fair market value of the Existing THATCHER System prior to the Transfer Date.

**9.6.** The Transfer Date shall occur thirty (30) days following ACC Approval; provided that, the Transfer Date shall not occur prior to July 1, 2017, unless the Parties mutually agree in writing that all arrangements necessary to accomplish the Transfer Date have been accomplished prior to July 1, 2017, in which case the Transfer Date shall be the first day of the month following completion of such arrangements.

**9.7.** Subject to the warranty contained in Section 9.1, GRAHAM shall accept the Existing THATCHER System and any other facilities transferred pursuant to this DW & OM Agreement, and the associated conveyed licenses, right-of-ways and easements, AS IS and WHERE IS, as of the Transfer Date, provided that, THATCHER shall maintain the THATCHER System in accordance with its current operations and maintenance practices prior to the sale and transfer of any such facilities.

**9.8.** Following the Transfer Date, THATCHER shall no longer hold any right, title, or interest in the Existing THATCHER System, and GRAHAM shall have all right, title, and interest in, and shall be responsible for the operation and maintenance of the THATCHER System. THATCHER shall continue to own all real property associated with the THATCHER System; provided that, THATCHER shall provide GRAHAM without any charge all licenses, right-of-ways, easements and other rights necessary for GRAHAM to own, operate and maintain the THATCHER System.

**9.9.** Prior to the Transfer Date, THATCHER shall cooperate with GRAHAM in efforts to notify and advise GRAHAM's retail customers affected by the THATCHER Notices that they will become retail customers of THATCHER as of the Transfer Date; and, GRAHAM shall cooperate with THATCHER in efforts to advise THATCHER's retail customers that GRAHAM is providing the distribution wheeling and O&M services for the THATCHER System.

**9.10.** Following the Transfer Date, THATCHER shall be the retail electric supplier to all customers served within the Existing THATCHER System Area, the Notice Expansion Area, and pursuant to Section 11, any Future Expansion Area(s).

9.11. At least ninety (90) days prior to the Transfer Date, THATCHER shall provide an inventory of its spare parts and equipment. Prior to the Transfer Date, the Authorized Representatives shall conduct a walkthrough of such spare parts and inventory, and GRAHAM shall identify the spare parts and equipment that it will never use. From time to time, upon mutual agreement by the Authorized Representatives, GRAHAM shall purchase spare parts and equipment from THATCHER as needed by GRAHAM, at a price agreeable to the Authorized Representatives. The Parties intend that GRAHAM will use existing THATCHER inventory needed by GRAHAM over time, rather than purchase such inventory new. Notwithstanding the foregoing, THATCHER is under no obligation to hold or maintain such inventory and may use or dispose of such inventory in its sole discretion.

**10. INTERCONNECTION TIE:**

The Interconnection Tie Agreement shall remain in effect until the Transfer Date. On and after the Transfer Date, this DW & OM Agreement shall supersede and replace the Interconnection Tie Agreement. Following the Transfer Date, GRAHAM shall own, operate and maintain the Interconnection Tie as part of its distribution system.

**11. FUTURE EXPANSION:**

11.1. If THATCHER annexes additional territory into THATCHER, THATCHER may, from time to time, give three (3) years' written notice to GRAHAM of THATCHER's intent to provide retail electric service to customers within the annexed area described in such notice ("Future Expansion Area Notice").

**11.2.** Prior to the Expansion Date, THATCHER and GRAHAM shall meet to discuss modifications to this DW & OM Agreement, including without limitation, adjustments to the attached **Exhibit "C"**, to reflect the value of the Future Expansion Area system.

**11.3.** If a) the Parties reach agreement pursuant to Section 11.2; b) the requisite approvals have been obtained from the ACC pursuant to Section 11.6; and, c) the metering and communications facilities required pursuant to Section 14.3 to allow THATCHER to provide retail electric service in the Future Expansion Area have been installed, then upon expiration of the three- (3) year notice period or such other date agreed by the Parties in writing (the "Expansion Date"), the following shall occur: i) the area so described in the Future Expansion Area Notice shall become part of the THATCHER Service Area; ii) the GRAHAM facilities in the Future Expansion Area shall become part of the THATCHER System; iii) the customers in the Future Expansion Area shall become retail customers of THATCHER; iv) GRAHAM shall transfer to THATCHER, free and clear of any liens, encumbrances or liabilities, the customer meters and all facilities on the customer side of the point of delivery owned by GRAHAM for all customers served by GRAHAM prior to the Expansion Date in the Future Expansion Area; v) the Interconnection Tie Point(s) of Delivery shall be adjusted as of the Expansion Date, as required by changes in the THATCHER Service Area; and, vi) the Parties shall revise **Exhibits "B", "E" and "F"** to depict any Future Expansion Areas and any changes to the Interconnection Tie Point(s) of Delivery.

**11.4.** If no agreement is reached pursuant to Section 11.2, GRAHAM will continue to serve the retail customers in the Future Expansion Area, and notice of



termination pursuant to Section 5.4(a) hereof shall be deemed given (but shall be effective no earlier than twenty (20) years following the Transfer Date). Effective on the termination date of this DW & OM Agreement pursuant to this Section 11.4, THATCHER will purchase the Future Expansion Area at a purchase price equal to the sum of: (a) five (5) times the gross annual revenues of the customers within such Future Expansion Area during the last full year next preceding the Expansion Date, as shown upon the billing records of GRAHAM; and, (b) the depreciated cost of facilities that are installed and paid for by GRAHAM in the Future Expansion Area after the Expansion Date. Subject to the requirements of Sections 7.2.2 and 7.2.3, the facilities and customers in the Future Expansion Area shall be transferred to THATCHER. All new customers added to a Future Expansion Area on and after the Expansion Date will be added pursuant to line extensions, as set forth in Section 12.7 hereof, and shall be THATCHER retail customers under this DW & OM Agreement.

**11.5.** Prior to the termination date of this DW & OM Agreement, THATCHER and GRAHAM shall cooperate in efforts to notify GRAHAM's retail customers affected by the Future Expansion Area Notice that they will become retail customers of THATCHER as of the termination date of this DW & OM Agreement.

**11.6.** In the event that the terms of either Sections 11.3 or 11.4 are triggered, GRAHAM's performance of the transactions contemplated in those sections shall be contingent upon receiving requisite approvals from the ACC, including but not limited to modifications to GRAHAM's CC&N, which approvals GRAHAM shall use all commercially reasonable efforts to obtain.

## **12. SYSTEM OPERATIONS AND IMPROVEMENTS:**

**12.1.** GRAHAM shall use prudent operating procedures to provide distribution, operation and maintenance service to THATCHER and the THATCHER System with the same reliability and quality as that provided to GRAHAM's distribution system and its own members. In the event of any curtailment necessitated by failure, outage or other shortage of capacity on GRAHAM's facilities, including the THATCHER System, to the extent feasible, such curtailment shall be imposed pro rata upon THATCHER's customers and GRAHAM's members in the same proportions as their respective requirements bear to the total GRAHAM system capacity.

**12.2.** The Parties anticipate that the rebuild of the New Thatcher Substation will not be required initially to implement this DW & OM Agreement. GRAHAM shall install additional distribution interconnections, metering and communications equipment to prevent overloads and accommodate future load growth fed from existing circuits. Such interconnections would be intended to avoid the need to rebuild the New Thatcher Substation. GRAHAM's actual costs for labor, equipment, materials and subcontractors for installing conductor, poles, wires, switches, meters and communications equipment related to new distribution interconnections, metering and communications shall be shared equally between GRAHAM and THATCHER.

**12.3.** The Parties acknowledge that delivery of the future power and energy requirements of THATCHER's customers and/or GRAHAM's members might necessitate modifications, improvements, relocations or additions to the THATCHER System or the GRAHAM distribution system serving Interconnection Tie Point(s) of Delivery, excluding substations which are addressed by Section 12.4. In the event

such modifications, improvements, relocations or additions are needed to maintain safe and reliable service, prior to making any such modifications, improvements, relocations or additions, the Authorized Representatives shall agree in writing as to the need, nature and estimated cost of such modifications, improvements, relocations or additions. GRAHAM shall be solely responsible to pay the first \$100,000 for the costs of each project undertaken pursuant to this Section 12.3, and any costs in excess of \$100,000 shall be paid equally by GRAHAM and THATCHER. In the event that the Parties do not agree on any matter related to modifications, improvements, relocations or additions to the THATCHER System or the GRAHAM distribution system serving Interconnection Tie Point(s) of Delivery, GRAHAM may implement any change to its system that is required by prudent operating procedures and generally accepted utility practices in the State of Arizona. If THATCHER disputes the allocation of costs from such changes or what changes constitute a "project," the dispute shall be resolved pursuant to Section 33.3.

**12.4.** The capital costs of any major substation development that GRAHAM reasonably determines to be necessary to provide reliable service to the THATCHER Service Area will be shared between GRAHAM and THATCHER on the basis of the ratio of loads of THATCHER's customers to loads of GRAHAM's members served from the substation. The Authorized Representatives shall agree in writing as to the need, nature and estimated cost of expenditures on major substation development and on the cost-sharing percentage in advance of any expenditure. In the event that the Parties do not agree on any matter related to major substation development, GRAHAM may implement any change to its system that is required by prudent

operating procedures and generally accepted utility practices in the State of Arizona. If THATCHER disputes the allocation of costs from such changes, the dispute shall be resolved pursuant to Section 33.3.

**12.5.** The Parties agree to share their respective load forecasts and transmission plans through a joint planning committee consisting of one representative of each Party. At the request of either Party, such committee shall cause technical transmission planning and delivery system loss studies to be performed as may be agreed between the Authorized Representatives from time to time. The scope and allocation of the costs of such technical studies shall be agreed to in writing by the Authorized Representatives before expenses for any such study are incurred.

**12.6.** THATCHER will perform normal maintenance on streetlights within the THATCHER Service Area. THATCHER will not perform any maintenance or other work on streetlights that requires disconnecting power to such streetlights, unless THATCHER notifies GRAHAM and GRAHAM disconnects power to the streetlights prior to THATCHER commencing such maintenance or other work.

**12.7.** Upon request for a line extension by THATCHER in the THATCHER Service Area, GRAHAM shall promptly implement such line extension in consultation with THATCHER. GRAHAM shall implement such line extension at a reasonable cost calculated in the same manner as line extensions for GRAHAM's members, excluding any right to refunds. Prior to commencing construction of a line extension, GRAHAM shall provide THATCHER with a good faith estimate of the cost of such line extension, which shall be subject to true up for actual costs. GRAHAM shall give requests for line extensions to the THATCHER System the same priority that it gives to line extension

requests from GRAHAM's members. GRAHAM shall advise THATCHER of the position of THATCHER's line extension requests in GRAHAM's line extension work schedule. All line extensions constructed by GRAHAM pursuant to this Agreement shall become part of the THATCHER System and shall be owned, operated and maintained by GRAHAM. GRAHAM shall bill and THATCHER shall pay the actual costs of all line extensions implemented pursuant to this DW & OM Agreement.

**12.8.** All retail customers located in the THATCHER Service Area shall be retail customers of THATCHER. THATCHER shall be solely responsible for retail electric service to such customers, including without limitation, line extensions, metering and billing, and communications related to service quality problems, interruptions and curtailments due to distribution system issues. GRAHAM shall communicate the reasons to THATCHER for any problems related to the distribution system affecting THATCHER's customers, and GRAHAM shall be responsive to calls from THATCHER with respect to service quality problems, interruptions and curtailments due to distribution system issues. GRAHAM shall respond to such calls from THATCHER in the same manner as it responds to issues involving service quality problems, interruptions and curtailments of its own members. THATCHER shall respond to calls from THATCHER's customers that THATCHER receives during normal business hours, referring any calls involving the distribution system to GRAHAM. In the event that GRAHAM receives a call from a THATCHER customer, GRAHAM will respond to the call and inform THATCHER of the nature of the response. Notwithstanding the fact that GRAHAM may respond to calls from THATCHER's customers, THATCHER shall have exclusive responsibility to its retail

customers; and, any recourse by a THATCHER retail customer shall be solely against THATCHER. GRAHAM's liability, if any, for issues involving service quality problems, interruptions and curtailments of THATCHER's retail customers shall be solely to THATCHER.

**12.9.** THATCHER shall be responsible for disconnecting THATCHER customers for nonpayment. THATCHER shall promptly notify GRAHAM of all customers that are disconnected. The Authorized Representatives shall provide each other with the contact information for the person(s) in their respective organizations who should send and receive such communications.

**12.10.** The Authorized Representatives shall meet and/or exchange information at least annually to discuss any upgrades and improvements planned for the THATCHER System and any unanticipated upgrades and improvements made by GRAHAM during the prior year. The purpose of such discussions is to reach consensus on the need for particular upgrades and improvements and to identify and categorize the facilities' costs that will become part of the depreciated cost of the facilities located within the THATCHER Service Area for which GRAHAM has paid, for purposes of Section 7.2.5 hereof.

**12.11.** There will be two unmetered separation points between GRAHAM's facilities and the THATCHER System that will normally be operated in an open position. For reliability purposes, these separation points may be closed during system emergencies to maintain service to THATCHER's customers or GRAHAM's members. For any periods of time during which the separation points are closed, the Authorized Representatives shall cooperate to estimate power flows that occur when

the separation points are closed and adjust energy accounting to maintain separation of GRAHAM and THATCHER energy sources.

**13. TRANSMISSION AND DISTRIBUTION SERVICE:**

**13.1.** GRAHAM shall provide transmission service for THATCHER Resources over its 69 kV system from the GRAHAM Point(s) of Receipt to: (a) the New Thatcher Substation, the designated GRAHAM Point of Delivery under the GRAHAM-THATCHER Transmission Wheeling Agreement, and (b) the 12.47 kV busses of the other GRAHAM 69/12.47 kV substations serving the Interconnection Tie Point(s) of Delivery, all pursuant to the terms of the GRAHAM-THATCHER Transmission Wheeling Agreement. In providing such service, GRAHAM will receive THATCHER Resources at the GRAHAM Point(s) of Receipt, and will deliver THATCHER Resources to the 12.47 kV busses of such GRAHAM substations, less losses applicable under the GRAHAM-THATCHER Transmission Wheeling Agreement, for which THATCHER shall be solely responsible. As of the Transfer Date: a) the GRAHAM-THATCHER Transmission Wheeling Agreement shall be amended to recognize that GRAHAM will provide transmission service for THATCHER Resources through its 69 kV system to the 12.47 kV busses of the other GRAHAM substations serving Interconnection Tie Point(s) of Delivery during the term of this DW & OM Agreement; and b) Exhibit B to the GRAHAM-THATCHER Transmission Wheeling Agreement shall be amended to add as Points of Delivery the 12.47 kV busses of the GRAHAM substations serving Interconnection Tie Point(s) of Delivery during the term of this DW & OM Agreement, which are anticipated to be the Freeman Substation and the Plant Substation. In the event of any conflict between this DW & OM Agreement

and the GRAHAM-THATCHER Transmission Wheeling Agreement, the terms of this DW & OM Agreement shall control.

**13.2.** GRAHAM shall provide distribution wheeling service to THATCHER from the 12.47 kV busses of the New Thatcher Substation and the other GRAHAM substations serving Interconnection Tie Point(s) of Delivery to the meters of all customers in the THATCHER Service Area. The Parties will determine energy losses related to such distribution wheeling service and work with AEPCO (or any replacement scheduling agent for THATCHER) to schedule sufficient energy under the AEPCO-THATCHER Scheduling Agreement and the GRAHAM-THATCHER Transmission Wheeling Agreement from THATCHER Resources to the GRAHAM Point(s) of Receipt to cover losses from the GRAHAM Point(s) of Receipt to the metering points at the New Thatcher Substation and the Interconnection Tie Point(s) of Delivery, such that the losses are supplied from THATCHER Resources or that the costs of losses associated with distribution wheeling services shall be the sole responsibility of THATCHER.

**13.3.** Nothing herein changes the method for calculating, accounting for and charging for losses on THATCHER Resources that are transmitted over SWTC's transmission system pursuant to the SWTC-THATCHER Contract.

**14. RESOURCE SCHEDULING AND ENERGY ACCOUNTING:**

**14.1.** So long as the AEPCO-THATCHER Scheduling Agreement remains in effect, AEPCO shall be THATCHER's scheduling agent for energy from THATCHER Resources delivered pursuant to this DW & OM Agreement. In the event of termination of the AEPCO-THATCHER Scheduling Agreement, THATCHER shall be



responsible to ensure that the scheduling of THATCHER Resources will be consistent with the energy accounting and balancing requirements of the SWTC-THATCHER Contract and the requirements for energy accounting as set forth in this DW & OM Agreement.

**14.2.** During each hour, THATCHER shall schedule and deliver or cause to be scheduled and delivered to GRAHAM at the GRAHAM Point(s) of Receipt an amount of energy equal to the load of the THATCHER Service Area, plus losses. The load of the THATCHER Service Area plus losses shall include any profiled loads determined pursuant to Section 14.5.

**14.3.** The Authorized Representatives of the Parties shall work with AEPCO and SWTC to develop metering and communication facilities, or alternatives to such facilities developed pursuant to Sections 14.4 and 14.5, as required to measure and communicate peak demands and energy, and to develop procedures for energy accounting that appropriately account for the use by GRAHAM and THATCHER of their individual power resources by their respective customers, as well as the delivery of such resources to such customers, including appropriate allocations of losses as experienced on the GRAHAM 12.47 kV distribution system as it may be expanded pursuant to this DW & OM Agreement.

**14.4.** In order to reduce the cost and number of new meters and associated communications equipment required under this DW & OM Agreement, the Authorized Representatives of the Parties have and shall continue to evaluate: (a) moving or constructing facilities to isolate the feeders serving THATCHER's customers from the feeders serving GRAHAM's members; (b) adjusting loss factors with respect to loads

that are so small that metering is not cost effective; and (c) using load profiling in accordance with Section 14.5. when customers of THATCHER and members of GRAHAM are served from a common feeder. To the extent economic, the goal of this evaluation is to meter THATCHER's loads at GRAHAM Point(s) of Delivery under the GRAHAM-THATCHER Transmission Wheeling Agreement, rather than at Interconnection Tie Points. Any arrangement in lieu of metering hereunder shall be subject to the written approval of AEPCO and SWTC.

**14.5.** The Authorized Representatives of THATCHER and GRAHAM have and will continue to jointly develop procedures intended to equitably adjust actual metered data to reflect estimated hourly profiles for a limited number of meters that do not economically justify installation of metering suitable to SWTC. Unless otherwise agreed by the Parties, THATCHER shall use the following procedures (which are illustrated in the example in Exhibit "D") to develop a THATCHER Supplied Load Profile to implement the load profiling contemplated by this Section 14.5.

**14.5.1.** The THATCHER Supplied Load Profile will use THATCHER's actual hourly system load profile as measured at all metering points used to serve the THATCHER System from the previous calendar year Scheduling Month, such that the THATCHER Supplied Load Profile will be adjusted to align the day-of-week; for example, the July 2016 Scheduling Month (Friday July 1, 2016 through Sunday July 31, 2016) would use THATCHER's actual hourly system load profile from Friday July 3, 2015 through Sunday August 2, 2015.

**14.5.2.** Five days before the start of the next Scheduling Month, THATCHER shall provide GRAHAM, AEPCO and SWTC the hourly load profile for the

Profiled Meters. The hourly load profile shall include THATCHER's estimate of the monthly load forecast for the Profiled Meters plus any reconciliation from previous months. The Parties envision a two-month reconciliation process where the actual retail monthly metered loads of the Profiled Meters will be compared to THATCHER's estimated monthly load forecast, and any difference will be added or subtracted to the monthly forecast for the Scheduling Month. THATCHER shall read its retail meters as close as possible to the first day of each calendar month. Losses on the distribution system from the point of metering to the Interconnection Tie Point(s) of Delivery shall be added to the hourly load profile resulting in the deemed monthly load of the Profiled Meters. The initial loss factor shall be 4.6% as set forth in Section 16.3.

**14.5.3.** The deemed monthly load of the Profiled Meters will then be patterned hourly based on the actual hourly system load profile referenced in Section 14.5.1, resulting in the THATCHER Supplied Load Profile. SWTC and AEPCO will treat the THATCHER Supplied Load Profile as one additional Interconnection Tie Point(s) of Delivery when determining THATCHER load and resource scheduling responsibilities under this DW & OM Agreement.

**14.5.4.** The initial list of the locations and the list of retail meters where load profiling will be used are set forth in the attached **Exhibit "E"**. To the extent new retail meters are added in an area subject to load profiling, THATCHER shall notify GRAHAM of the meter numbers and locations, and GRAHAM shall update the list of meters and locations in **Exhibit "E"**. If either THATCHER or GRAHAM become unsatisfied with the load profiling procedures, the unsatisfied Party may elect to add additional metering, subject to the SWTC standards, at its sole costs.

**15. METERING AND BILLING:**

**15.1.** GRAHAM shall install, own, operate and maintain all necessary metering and communication equipment determined pursuant to Section 14.3 at the GRAHAM Point(s) of Delivery to THATCHER and at all Interconnection Tie Point(s) of Delivery between GRAHAM's distribution facilities and the THATCHER Service Area, the initial locations for which are set forth in the attached **Exhibit "F"**.

**15.2.** GRAHAM shall arrange with AEPCO and SWTC to install meters and communications equipment determined pursuant to Section 14.3, as required to distinguish between usage by GRAHAM and usage by THATCHER for purposes of billing by AEPCO and SWTC to GRAHAM and THATCHER.

**15.3.** THATCHER shall own, operate and maintain all retail customer meters in the THATCHER Service Area; and, THATCHER shall be responsible for reading such meters and billing all of THATCHER's retail electric customers.

**15.4.** For purposes of calculating charges hereunder, GRAHAM shall request meter readings from SWTC from the meters used to measure the electrical power and energy delivered to the GRAHAM Point(s) of Delivery and the Interconnection Tie Point(s) of Delivery as of Midnight on the last day of each month. The aggregate of THATCHER's retail customer loads shall be metered at the GRAHAM Point(s) of Delivery and the Interconnection Tie Point(s) of Delivery and be subject to GRAHAM'S transmission wheeling and loss rates pursuant to the GRAHAM-THATCHER Transmission Wheeling Agreement. GRAHAM also shall be compensated for losses over its 12.47 kV distribution system for deliveries to Interconnection Tie Point(s) of

Delivery. Total metered loads shall be adjusted to account for load profiling or other measures implemented pursuant to Sections 14.4 and 14.5.

**15.5.** GRAHAM shall render monthly statements to THATCHER, which shall include all relevant information required to determine THATCHER's distribution wheeling charges as set forth in Section 16.

**15.6.** GRAHAM shall bill THATCHER for fifty percent (50%) of its actual costs incurred after the effective date of this DW & OM Agreement, for labor, equipment, materials and subcontractors (including SWTC) for installing conductors, poles, wires, switches and meters and communications equipment required pursuant to Sections 15.1 and 15.2.

**15.7.** GRAHAM shall have no obligation to incur any cost for installing conductors, poles, wires, switches and meters and communications equipment required pursuant to Sections 15.1 and 15.2, until the THATCHER electorate approves an increase in THATCHER's spending limitation pursuant to Section 6.2 to an amount sufficient to allow it to perform its obligations under this DW & OM Agreement.

**15.8.** The Authorized Representatives of the Parties shall cooperate to determine the location of all meters and associated communications equipment required under this DW & OM Agreement and shall develop procedures regarding metering configurations, 12.47 kV loss factors, meter testing and rebilling for meter inaccuracies.

**16. CHARGES FOR DISTRIBUTION WHEELING:**

**16.1.** The charge for distribution wheeling service shall be the sum of the following: (a) the product of the rate for distribution wheeling service set forth in

Section 16.2, as the same may be adjusted pursuant to this Section 16, multiplied by the kWh of energy delivered at the New Thatcher Substation (as metered at the low side of the 69/12.47 kV transformers at the New Thatcher Substation), plus (b) the product of the rate for distribution wheeling service set forth in Section 16.2, as the same may be adjusted pursuant to this Section 16, multiplied by the quotient produced by a numerator equal to the kWh of energy delivered at the Interconnection Tie Point(s) of Delivery and a denominator equal to the difference of 1 (one) minus the loss factor set forth in Section 16.3, with the loss factor expressed in decimal form, as the same may be adjusted pursuant to this Section 16. The kWh component of the charge for distribution wheeling service shall be adjusted to account for any load profiling or other measures implemented pursuant to Sections 14.4 and 14.5.

**16.2.** The initial rate for calculating the charge for distribution wheeling service shall be \$0.01825 per kWh, as adjusted as provided in the attached **Exhibit "C"**.

**16.3.** The initial loss factor for losses on GRAHAM's 12.47 kV distribution system shall be 1.5% for primary meters and 4.6% for loads determined by load profiling pursuant to Section 14.5. Upon request by either Party, the Authorized Representatives shall cooperate to develop new loss factors, which may be adjusted upon demonstration that a change is warranted.

**17. TAXES:**

**17.1.** In addition to the charges set forth in Section 16.1, any governmental transactions tax, privilege tax, sales tax or other gross revenue tax, including but not limited to, assessments or regulatory impositions of the Federal Energy Regulatory Commission ("FERC"), the ACC or other governmental taxing and/or regulatory

bodies, which may now or later be mandatorily imposed by law upon the service provided by GRAHAM to THATCHER pursuant to this DW & OM Agreement, shall be added by GRAHAM to the charges of Section 16.1 to THATCHER; provided that, GRAHAM provides THATCHER with 90 days' notice prior to adding any such taxes or assessments that may be imposed after the effective date of this DW & OM Agreement, with GRAHAM's first billing thereafter collecting for such taxes or assessments from the date of their imposition.

**17.2.** Nothing in this DW & OM Agreement precludes THATCHER from challenging the applicability of any governmental transactions tax, privilege tax, sales tax or other gross revenue tax, including but not limited to, assessments or regulatory impositions of FERC, the ACC or other governmental taxing and/or regulatory bodies to THATCHER. GRAHAM will not oppose any such challenge.

**17.3.** THATCHER shall not impose any franchise fees or privilege taxes on GRAHAM with respect to any THATCHER electric customers within the THATCHER Service Area.

**17.4.** In the event the revenues received by GRAHAM pursuant to this DW & OM Agreement would cause GRAHAM to exceed the 15% limit on non-member revenue imposed by the Internal Revenue Service and thereby become subject to payment of income taxes, THATCHER shall become a member of GRAHAM pursuant to the terms of GRAHAM's bylaws; and, THATCHER agrees that the GRAHAM Board may determine the methodology for allocating capital credits or patronage retirements associated with such membership. GRAHAM agrees that this provision will not result

in THATCHER incurring any additional costs under this DW & OM Agreement, other than the payment of GRAHAM's membership fee.

**18. PAYMENT AND PENALTY:**

THATCHER shall pay GRAHAM for all costs identified as payable by THATCHER in this DW & OM Agreement. Payment by THATCHER of charges billed by GRAHAM shall be due on the 15th day of the calendar month following the month for which the bill is rendered, or on the 15th day after the date of deposit by GRAHAM of the bill in the United States mail, whichever is later. Bills not paid in full by said due date shall thereafter bear an additional charge of one percent (1%) per month, or the maximum legal rate of interest, whichever is less, on the unpaid amount prorated by days until payment is received by GRAHAM, and such charge shall also apply to any unpaid bill, or portion thereof, which is disputed and thereafter determined to be proper. A billing or any other dispute shall not relieve THATCHER of the obligation to make payments as and when due, although THATCHER's rights may be reserved by designating a payment as "made under protest." Accordingly, any overpayment due to billing error that is subsequently corrected shall bear interest at the same rate from the time of overpayment until the date of refund or issuance of a subsequent bill on which the resulting credit is given.

**19. UNCONTROLLABLE FORCES:**

**19.1.** No Party shall be considered to be in default in the performance of any of its obligations under this DW & OM Agreement, except as enumerated hereunder, when a failure of performance shall be due to Uncontrollable Forces, as defined below. The Party claiming excused failure of performance shall promptly contact the



other Party and provide written notice that an Uncontrollable Force has caused failure of performance.

**19.2.** The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party unable to perform its obligation, which such Party could not reasonably have been expected to avoid by exercise of due diligence, and which it has been unable to overcome despite having exercised due diligence. Causes beyond the control of a Party shall include, but not be limited to, acts of God; failure of or threat of immediate failure of facilities; explosion, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophe; epidemic, war, riot, sabotage, civil disturbance or disobedience, strike, labor disturbance, dispute or unrest of whatever nature; labor, material or fuel shortage; restraint by court order or public authority; and action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority.

**19.3.** A Party shall not, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch and due diligence. Any Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall nonetheless exercise due diligence to remove such inability with all reasonable dispatch.

**19.4.** Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved.

**19.5.** Should GRAHAM experience an Uncontrollable Force that interrupts service to THATCHER, GRAHAM shall use prudent operating procedures and

generally accepted utility practices in the State of Arizona in an effort to establish alternative means to promptly restore such service. In the event that, even after use of such reasonable efforts, GRAHAM remains unable to restore service to THATCHER because of Uncontrollable Forces, GRAHAM shall not be liable to THATCHER for such interruption.

**20. DISCONNECTION:**

**20.1.** Each Party (the "Disconnecting Party") shall have the right, but not the obligation, at any time during the term of this DW & OM Agreement, in accordance with prudent operating procedures and generally accepted utility practices in the State of Arizona, to disconnect its facilities, or interrupt, suspend or curtail service over its facilities to the extent the Disconnecting Party determines or has determined in the exercise of its sole discretion that failure to do so:

**20.1.1.** may endanger any person or property or the operation of the Disconnecting Party's facilities (including, but not limited to, any transmission or distribution line thereof) or any facilities with which Disconnecting Party is interconnected;

**20.1.2.** may cause or contribute to imminent significant disruption of electric service (including, without limitation, material reduction in quality of service) on the Disconnecting Party's facilities;

**20.1.3.** may interfere with any construction, installation, operation, use, maintenance, repair, replacement, alteration, modification, improvement, inspection or testing of, or addition to, the Disconnecting Party's facilities or other property owned or controlled by Disconnecting Party; or

**20.1.4.** is contrary to prudent operating procedures and generally accepted utility practices in the State of Arizona.

**20.2.** The Disconnecting Party shall use reasonable efforts to give the other Party reasonable advance written notice of any such disconnection, interruption, suspension or curtailment and to provide the other Party with the opportunity to coordinate and consult with respect to scheduling the same. The Disconnecting Party shall promptly notify the other Party of the reasons for any such disconnection, interruption, suspension or curtailment. The Disconnecting Party shall use reasonable efforts to limit the duration of any such disconnection, interruption, suspension or curtailment.

**20.3.** No Party shall have any liability (whether arising in contract, tort, strict liability, warranty or otherwise) to the other Party for any loss or damage whatsoever arising out of any action taken by such Party pursuant to this Section 20.

**21. ELECTRIC DISTURBANCES:**

Each Party shall design, construct, operate, maintain and use its facilities in order: (a) to minimize electric disturbances or faults such as, but not limited to, the abnormal flow of power which may damage or interfere with the facilities of the other Party or any facilities connected with such other Party's facilities; and (b) to minimize the effect on its facilities and on its customers of electric disturbances or faults originating on its own or others' facilities.

**22. LIMITATION ON CONSEQUENTIAL DAMAGES:**

A Party shall be liable for direct damages resulting from a breach of any provision of this DW & OM Agreement, but shall not be liable for any special, indirect,

incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

**23. INDEMNITY AND INSURANCE:**

**23.1.** Each Party shall indemnify and hold harmless the other Party, its directors, officers, agents and employees for, from and against: (a) any claim or action for death, personal injury, or loss or damage to property, whether direct, indirect or consequential, to the extent caused by the indemnifying Party's negligence in performing activities within the scope of this DW & OM Agreement; and, (b) any costs or expenses of repairing any damage to the other Party's property caused by the indemnifying Party and resulting from any entry onto the property of the other Party or work performed upon real or personal property of the other Party pursuant to the provisions of this DW & OM Agreement.

**23.2.** The provisions of this Section 23 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds or provide a defense in accordance with the terms and conditions of any valid insurance policy of any Party.

**23.3.** GRAHAM shall be solely responsible for insurance on the THATCHER System on and after the Transfer Date, and shall name THATCHER and THATCHER's customers as additional insureds.

**23.4.** Each Party shall indemnify and hold the other Party harmless for, from and against any cost, expense, claim or harm resulting from the failure of that indemnifying Party to agree to modifications, improvements or upgrades to the

THATCHER System that are proposed by the other Party and required by prudent operating procedures and generally accepted utility practices in the State of Arizona.

**23.5.** THATCHER shall indemnify and hold GRAHAM harmless from and against any cost, expense, claim or action (including the cost of any lawsuit both at trial and on any appeal) brought by a retail customer of THATCHER related to billing disputes. Should a claim be filed by a THATCHER customer against GRAHAM or THATCHER, the Parties shall cooperate to investigate and resolve the claim.

**24. RIGHT OF ACCESS:**

THATCHER shall provide GRAHAM reasonable access to THATCHER's facilities, including without limitation, real property, meters and associated electrical facilities in order to implement this DW & OM Agreement.

**25. NOTICES:**

**25.1.** Any notice, demand or request provided for in this DW & OM Agreement shall be deemed to be properly made if delivered or sent by United States mail, postage prepaid, return receipt requested, to the following:

To THATCHER:

Manager of the Town of Thatcher  
P.O. Box 670  
Thatcher, AZ 85552

To THATCHER'S Authorized Representative:

At such address as is provided by the Authorized Representative

To GRAHAM:

General Manager,  
Graham County Electric Cooperative, Inc.  
P.O. Drawer B  
Pima, AZ 85543

To GRAHAM'S Authorized Representative:

At such address as is provided by the Authorized Representative

**25.2.** In the event that a Party provides a notice, demand or request under this DW & OM Agreement that relates to termination of this DW & OM Agreement, a default under this DW & OM Agreement, a dispute under this DW & OM Agreement or any other matter that is reasonably likely to affect AEPCO or SWTC, such Party shall provide a copy of such notice to AEPCO and SWTC addressed to the following:

To AEPCO:

Arizona Electric Power Cooperative, Inc.  
c/o Chief Executive Officer  
1000 S. Highway 80  
P.O. Box 670  
Benson, AZ 85602

To SWTC:

Southwest Transmission Cooperative, Inc.  
c/o Chief Executive Officer  
1000 S. Highway 80  
P.O. Box 2195  
Benson, AZ 85602

**25.3.** The designation or the address of any person specified in this Section 25 may be changed at any time by written notice. Communications of a routine character in the ordinary course of performance of administration, scheduling, delivery or receipt

of power or operation of facilities shall be given in such manner as the Parties shall from time to time cooperatively arrange.

**26. AVAILABILITY OF RECORDS AND AUDIT RIGHTS:**

**26.1.** All records and information of the Parties pertaining to operations under the terms and conditions of this DW & OM Agreement shall be available for inspection and utilization by duly authorized representatives of the other Parties upon reasonable notice and during normal business hours.

**26.2.** Each Party shall have the right, during normal business hours and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, and each Party's actions in emergency conditions. Any audit authorized by this Section 26 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this DW & OM Agreement. Accounts and records related to either Party's performance or satisfaction of all obligations under this DW & OM Agreement shall be subject to audit as follows: (a) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four (24) months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (b) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four (24) months after the event for which the audit is sought. Each Party shall keep

such accounts and records for a period equivalent to the twenty-four (24) month audit rights periods described above.

**27. AUTHORITY FOR THIS DW & OM AGREEMENT:**

**27.1.** GRAHAM and THATCHER each represent and warrant that the person signing this DW & OM Agreement on its behalf has full authority to execute this DW & OM Agreement, and that it has taken all action necessary or appropriate under applicable law and the organizational documents of such Party to make this DW & OM Agreement the valid and binding obligation of such Party, enforceable in accordance with its terms.

**27.2.** GRAHAM represents and warrants that it is an Arizona non-profit electric cooperative that was incorporated in 1945 and is duly formed, validly existing, and in good standing pursuant to the laws of the State of Arizona and has the full power and authority to enter into this DW & OM Agreement.

**27.3.** THATCHER represents and warrants that it is an Arizona municipal corporation duly formed, validly existing, and in good standing pursuant to the laws of the State of Arizona and has the full power and authority to enter into this DW & OM Agreement.

**28. WAIVER:**

Any waiver by a Party hereto of its right with respect to a default of this DW & OM Agreement or with respect to any other matter arising in connection with this DW & OM Agreement shall not be deemed to be a waiver with respect to any subsequent recurrence of the same, or any different default or matter. No delay short of the



statutory period of limitations in observing or enforcing any right hereunder shall be deemed a waiver of such right.

**29. ASSIGNMENTS:**

**29.1.** This DW & OM Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

**29.2.** Either Party may, upon giving the other Party written notice thereof, transfer, sell, pledge, encumber or assign the revenues or proceeds due such Party under this DW & OM Agreement.

**29.3.** Either Party may, upon giving at least thirty (30) days' written notice to the other Party, and without the prior written consent of the other Party, transfer or assign this DW & OM Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, including THATCHER's right to buy the THATCHER System upon termination of this DW & OM Agreement, as provided in Section 7.2.5.

**29.4.** Except as provided in Sections 29.2 and 29.3, neither Party shall assign its interest in this DW & OM Agreement in whole or part without the prior written consent of the other Party; provided that, such consent shall not be unreasonably withheld if such assignee agrees in writing to be bound by the terms and conditions hereof, including THATCHER's right to buy the THATCHER System upon termination of this DW & OM Agreement, as provided in Section 7.2.5. No assignment, merger or consolidation shall relieve any Party of any obligation under this DW & OM Agreement.

**29.5.** GRAHAM may pledge or encumber the THATCHER System pursuant to any mortgage or indenture with CFC that applies to all of GRAHAM's distribution assets, provided that GRAHAM shall obtain a release from CFC of such pledge or encumbrance at the time GRAHAM is required to transfer the THATCHER System to THATCHER pursuant to this DW & OM Agreement. If required by the applicable loan documents, GRAHAM shall use the proceeds from the transfer of the THATCHER System to THATCHER in order to retire debt to obtain a release from CFC of any pledge or encumbrance applicable to the THATCHER System. In the event that GRAHAM wishes to encumber or pledge all or a portion of the THATCHER System as security for financing with a financing entity other than CFC, the Parties shall cooperate to implement reasonable amendments to this DW & OM Agreement if required by the lender to permit such financing, provided that such amendments do not materially affect THATCHER's rights under this DW & OM Agreement.

**30. CONTROLLING LAW:**

This DW & OM Agreement shall be governed by and interpreted in accordance with Arizona law.

**31. ATTORNEYS' FEES:**

In the event suit is brought by a Party to this DW & OM Agreement to enforce the terms of this DW & OM Agreement or to collect any money due hereunder, or to collect money damages for breach hereof, the prevailing Party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees (including at trial and on any appeal), court costs, costs of investigation and other related expenses incurred in connection therewith.

**32. SPECIFIC PERFORMANCE:**

In addition to such other remedies as may be available under applicable law, the Parties acknowledge that the remedies of specific performance and/or injunctive relief shall be available and proper in the event any Party fails or refuses to perform its duties hereunder.

**33. AUTHORIZED REPRESENTATIVES; DISPUTE RESOLUTION:**

**33.1.** Each Party shall appoint an Authorized Representative who shall be responsible to work with the Authorized Representative of the other Party to implement this DW & OM Agreement. Each Party shall give the other Party notice of the identity and contact information of its Authorized Representative and may change its Authorized Representative at any time by written notice to the other Party. The Authorized Representatives from time to time may designate persons within their respective organizations to deal with the day-to-day implementation of this DW & OM Agreement, and to receive routine notices, such as a notice of disconnection.

**33.2.** Any question, dispute, controversy or failure to agree where agreement is required (a "Dispute") arising out of or related to the terms and/or subject matter of this DW & OM Agreement shall be submitted in writing by the Authorized Representative of the disputing Party to the Authorized Representative of the other Party. The Authorized Representatives shall attempt to resolve any such Dispute within sixty (60) days of such submittal and presentation.

**33.3.** Unless otherwise agreed by the Parties, any Dispute that the Authorized Representatives are unable to resolve within sixty (60) days shall be submitted by the

disputing Party to arbitration and resolved in accordance with the arbitration procedures set forth as follows:

**33.3.1.** The Authorized Representatives shall attempt to agree on the selection, retention, and appointment of a single neutral independent arbitrator with expertise in the area of the Dispute, within ten (10) business days after the matter is submitted to arbitration pursuant to Section 33.3 above. The cost of such single arbitrator shall be shared equally by the Parties. If the Parties fail to agree upon a single arbitrator within that ten (10) business day period, each Party shall choose one arbitrator within the next five (5) business days who shall sit on a three (3) member arbitration panel. THATCHER shall retain and provide one arbitrator at its sole expense, and GRAHAM shall retain and provide one arbitrator at its sole expense. Those two arbitrators shall select and retain a third independent arbitrator, who shall chair the arbitration panel. The expenses related to the third independent arbitrator shall be shared equally by THATCHER and GRAHAM. In either case, the arbitrators shall not have any current or past substantial business or financial relationships with any Party to the arbitration (except prior arbitration).

**33.3.2.** The arbitrator(s) shall conduct an arbitration of the Dispute within twenty (20) days after appointment (or such shorter or longer time as agreed upon by the arbitrator(s) and approved by the Parties). The arbitrator(s) shall provide each of the Parties with the opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and applicable substantive law. Except to the extent it would be contrary to or inconsistent with the provisions

herein, the provisions of A.R.S. §§ 12-1501 et seq. shall apply. If there is a three member panel rather than a single arbitrator, the powers of the arbitrators, including the power to issue rulings on the merits of the Dispute, may be exercised by a majority.

**33.3.3.** Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within thirty (30) days following the arbitration, and shall notify the Parties in writing of such decision and the reasons for it, but without the necessity of detailed findings of fact and conclusions of law. In the discretion of the arbitrator(s), the ruling may include an award of the prevailing Party's costs and reasonable attorneys' fees against the other Party. The decision of the arbitrator(s) shall be final and binding on the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be opposed or modified in accordance with and for the reasons set forth in A.R.S. §§ 12-1512 and 1513.

**34. LICENSES, RIGHT-OF-WAYS AND EASEMENTS:**

**34.1.** The Parties agree that licenses, right-of-ways and easements required by a requesting Party from the other Party to enable the requesting Party to perform in accordance with the provisions of this DW & OM Agreement shall be made available to the requesting Party without undue cost or delay by the other Party. Each Party agrees to be reasonable within standard utility practice with respect to the locations it requests for such licenses, right-of-ways and easements in the service territory of the other Party.

**34.2.** Any license, right-of-way or easement that has been granted by a Party to the other Party shall not be set aside by the granting Party so long as the other

Party requires such license, right-of-way or easement to provide electric service in its service territory or to provide service pursuant to this DW & OM Agreement.

**34.3.** The Parties shall cooperate to execute such documents as are necessary to effectuate the purposes of this DW & OM Agreement.

**35. EXECUTION NOT PRECEDENT:**

THATCHER shall not cite or rely on the execution, performance or termination of this DW & OM Agreement by GRAHAM as precedent or support for any claim, complaint or case filed by THATCHER with the FERC, by which THATCHER would seek to compel GRAHAM to involuntarily provide interconnections between GRAHAM's 69 kV or 12.47 kV electrical facilities and the THATCHER System or wheeling or transmission services to THATCHER over GRAHAM's electrical facilities.

**36. SURVIVAL:**

The obligations of Sections 7, 18, 22, 23, 26, 31, 33 and 35 hereof shall survive termination of this DW & OM Agreement until satisfied. The provisions of Section 11 hereof shall survive termination as to any Future Expansion Area Notice given prior to termination of this DW & OM Agreement. All payment obligation incurred prior to termination shall survive termination until satisfied.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this DW & OM Agreement to be executed, attested and delivered by their respective duly authorized executives, as of this 15<sup>th</sup> day of February, 2016.

TOWN OF THATCHER

By: Bud Rumi

Title: Mayor

Date: 2-15-2016

ATTEST:

By: TH Hinte  
Town Clerk-Manager

Date: 2-15-2016

GRAHAM COUNTY ELECTRIC  
COOPERATIVE, INC.

By: Steve M. Jones

Title: GENERAL MANAGER

Date: 2-3-2016

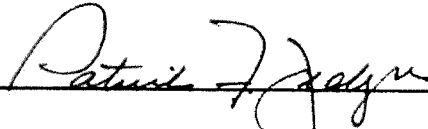
ATTEST:

By: Tommy Clonts  
Secretary

Date: 2/3/2016

Acknowledged By:

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

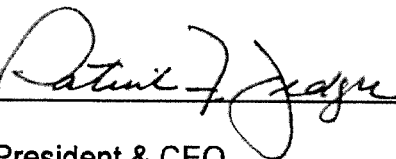
By: 

Title: Executive Vice President & CEO

Date: 2/23/2016

Acknowledged By:

SOUTHWEST TRANSMISSION  
COOPERATIVE, INC.

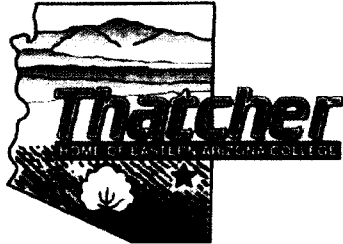
By: 

Title: President & CEO

Date: 2/23/2016



**THATCHER NOTICES**



**TOWN COUNCIL**

Robert Rivera, Mayor  
William Mulleneaux, Vice Mayor  
Eric Merriman  
Kenneth Larson

Terry Hinton, Town Manager

Charles Morris  
Donald Innes  
Wayne Griffin

5/26/2006

Mr. Steve Lines  
Manager  
Graham County Electric COOP  
PO Drawer B  
Pima, Arizona 85543

Dear Steve:

As we have discussed I am attaching a map of the service areas within the Town Limits of Thatcher that the Town would like to purchase from the COOP. There are three areas and they are marked in red. As per the September 1973 agreement, Section 1 we would ask that this letter act as the notice to purchase and the five year notification period begin as of the date of this letter.

After you have reviewed the map please let me know if we need to make any changes or you have any questions.

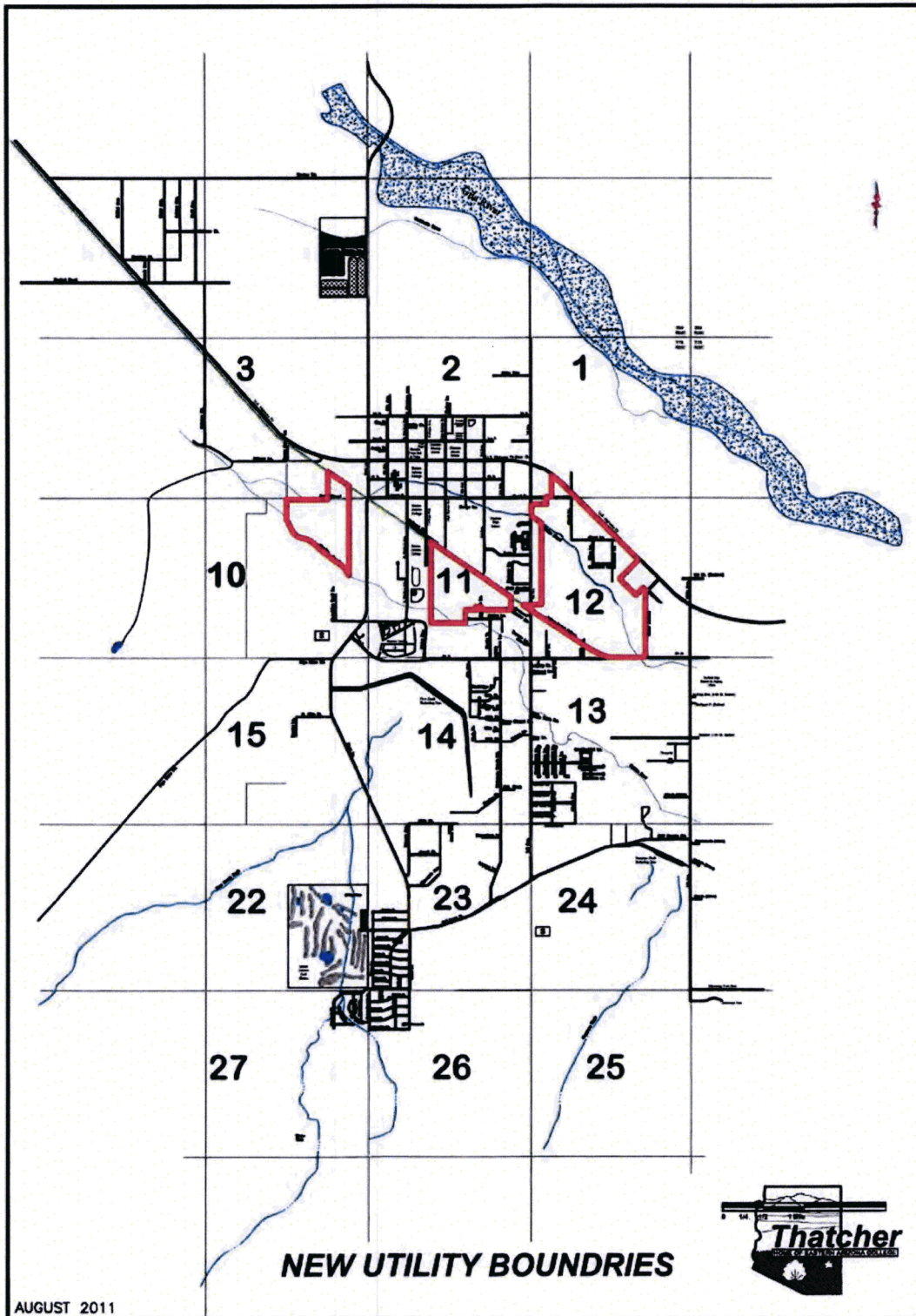
Sincerely,

*T. Hinton*

Terry Hinton  
Town Manager

**TOWN OF THATCHER**

P.O. BOX 670 - 3700 W. MAIN STREET - THATCHER, AZ 85552 - (928) 428-2296 - FAX (928) 428-2040





**TOWN COUNCIL**

Robert Rivera, Mayor  
William Mulleneaux, Vice Mayor  
Eric Merriman  
Kenneth Larson

Terry Hinton, Town Manager

Charles Morris  
Donald Innes  
Wayne Griffin

8/17/2011

Mr. Steve Lines  
Manager  
Graham County Electric COOP  
PO Drawer B  
Pima, Arizona 85543

Dear Steve:

The Town of Thatcher, with this letter, is notifying the Graham County Electric COOP of our intention to purchase additional service area within the Town Limits of Thatcher as per the revised 1973 Agreement. Prior to the purchase we will schedule an election to gain support of the citizens of Thatcher. I am including a map covering our proposed future purchase. The date of this letter should be the date to begin the three (3) year notification period.

Please let me know if you need any additional information.

Sincerely,

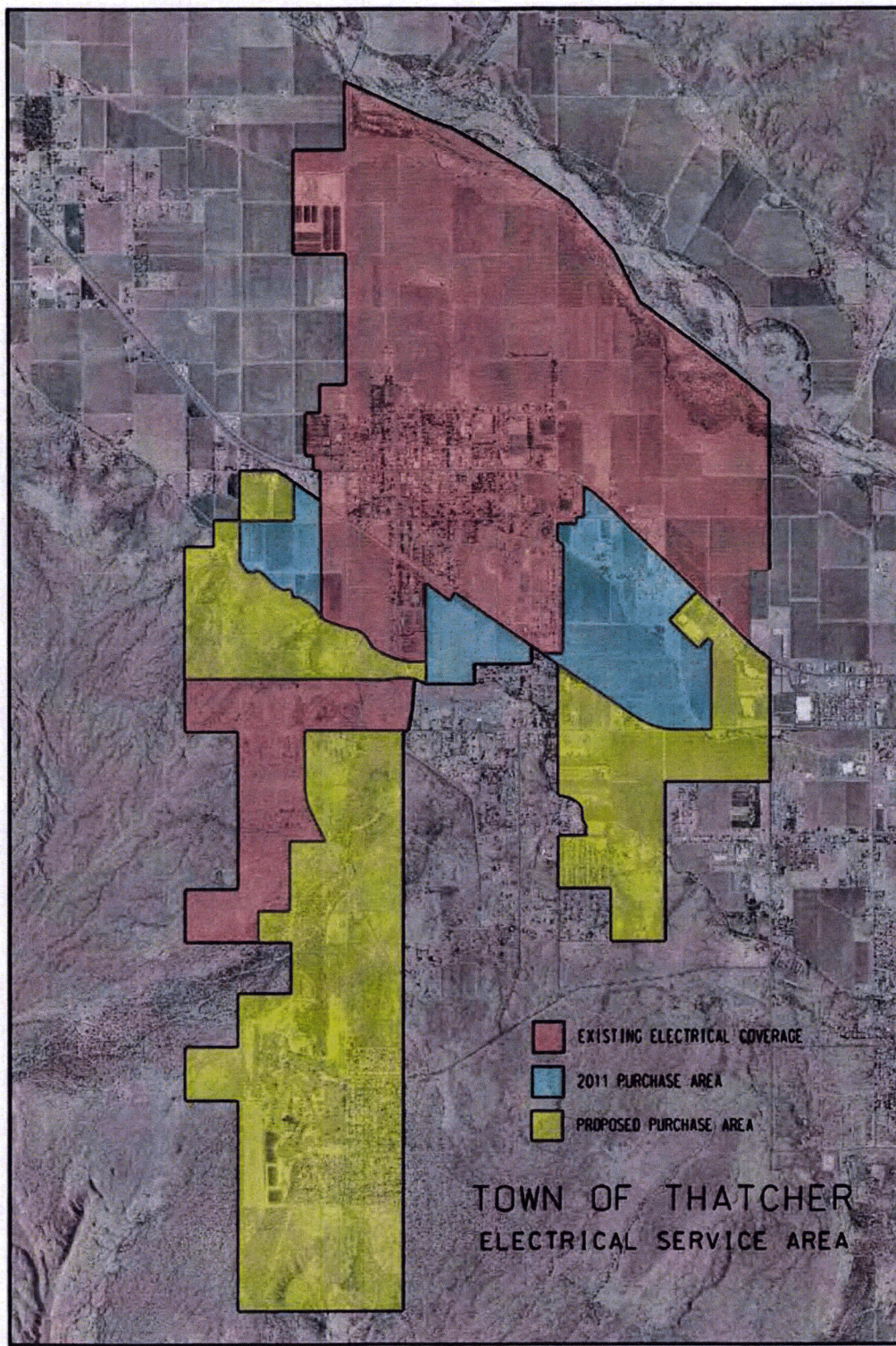
Terry Hinton  
Town Manager

cc: Town Council  
Dennis Delaney  
Sheryl Sweeney

**TOWN OF THATCHER**

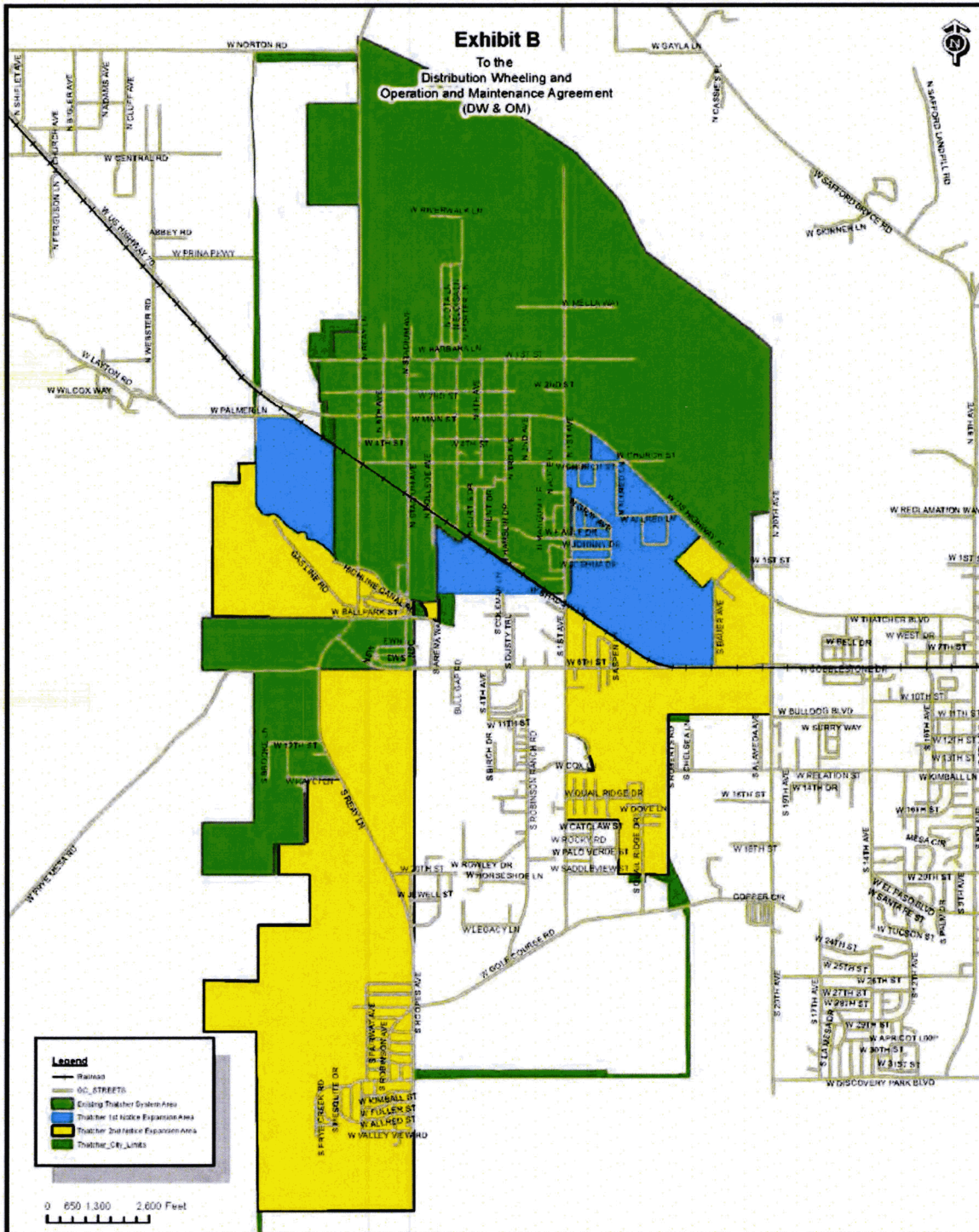
P.O. BOX 670 - 3700 W. MAIN STREET - THATCHER, AZ 85552 - (928) 428-2296 - FAX (928) 428-2040







**MAP DEPICTING EXISTING THATCHER SYSTEM AREA AND  
NOTICE EXPANSION AREA**



**GRAHAM COUNTY ELECTRIC COOPERATIVE (GRAHAM) NETWORK  
DISTRIBUTION FORMULA RATE DESCRIPTION  
FOR THE TOWN OF THATCHER**

The rate for distribution wheeling and operation and maintenance (O&M) services provided by GRAHAM to THATCHER pursuant to the DW&OM Agreement shall be adjusted to reflect changes in GRAHAM's costs related to such services pursuant to a formula rate methodology. The components of the formula rate to be incorporated into GRAHAM's rate for such services shall be as set forth in this Exhibit C, and in Exhibit C-1, which provides an example of the formula rate calculation in Xcel spreadsheet format. Exhibit C-2 sets forth the implementation protocols which describe how GRAHAM will update the cost components of the formula in future years, what the review procedures are, how challenges will be resolved, and how any changes to the annual rate will be implemented.

GRAHAM will use actual prior fiscal year audited cost and Plant in Service data as the basis for the Distribution Revenue Requirements (DRR) that shall be used to determine GRAHAM's rate. The formula rate will ensure that rates for services provided to THATCHER are established and changed on the same basis as rates for comparable services to GRAHAM's retail customers.

Included in this Exhibit C is the formula description, and included in Exhibit C-1 is a template for the formula that GRAHAM will use. The template has been populated with 2012-2014 audited financial results, to establish the initial Distribution Revenue Requirement under the formula approach. The Parties have agreed to a "density factor" adjustment to GRAHAM's formula rate that reflects the higher density of load in Thatcher's service territory compared to that of GRAHAM's. The Parties have also established a "Settlement Factor" to reach the Parties' negotiated initial rate. GRAHAM will maintain a permanent record of the audited trial balance grouping schedule that was used as the basis for the calculations depicted in Exhibit C-1, including the Excel spreadsheet that was used to prepare Exhibit C-1.

**Formula Description**

The formula produces the annual Distribution Revenue Requirement which is the sum of the distribution operation and maintenance, depreciation expense, debt service expense, and revenue credits for GRAHAM as reported in the annual Financial Statement Adjusted Trial Balance, and the allocated Administrative & General expense. Each line of the formula consists of four columns of

information or data: (1) the line number; (2) a description of the cost item; (3) the actual data input; and (4) either the source of the input data, or an instruction describing a calculation.

Sections of the formula are grouped by category as follows: (a) Operation and Maintenance expenses, (b) allocated GRAHAM Operations & Maintenance and Administrative & General Expense; (c) Distribution Depreciation expense and allocated General Plant Depreciation expenses; (d) Debt Service & Return; (e) Revenue Requirement (including adjustments such as revenue credits); (f) Annual System Energy Sales and (g) Notes. The formula includes cost data from the prior three years as reported in GRAHAM's annual Financial Statement Adjusted Trial Balance.

Operation & Maintenance and Administrative & General expenses are allocated to the distribution function based on labor allocators.

Annual interest expense on the GRAHAM distribution assets are multiplied by a Times Interest Earned Ratio (TIER) of 2.0 as allowed by the Arizona Corporation Commission in GRAHAM's most recent rate filing to arrive at the annual return on the Distribution long term debt.

The net revenue requirement is divided by the test year Total System Energy Sales to all load served by the GRAHAM distribution system including THATCHER loads, with the result that all retail loads served by the GRAHAM system pay the same distribution wheeling and O&M rate per kW for power delivery. This rate will then be discounted by the Density Factor Discount of 54.32%. The Density Factor Discount is based on a ratio of the five year average cost of service for THATCHER to operate and maintain its own electric system (\$17.93/MWh) with the new GRAHAM transferred loads to the GRAHAM Annual Calculated Distribution wheeling rate. The Density Factor Discount will be fixed at 54.32% throughout the life of the DW&OM Agreement. A Settlement Factor of 101.8% is then applied to arrive at the initial GRAHAM distribution wheeling and O&M rate (Initial Rate) to be charged for the first year of service. The Initial Rate reflects the starting point previously agreed to by the Parties. The Settlement Factor of 101.8% will be fixed for the life of the DW&OM Agreement.



# Exhibit C-1

Graham County Electric CoOp

## CALCULATION OF DISTRIBUTION RATES FOR TOWN OF THATCHER

		2014				Three Year	
		DATA	2012	2013	2014	Average	
<b>OPERATION &amp; MAINTENANCE</b>							
1	Distribution Expense	\$2,116,314	\$1,922,268	\$2,268,512	\$2,158,163	\$2,116,314	Audited Trial Balance Subgroup 4120 & 4130 (less Acct # 563-571)
<b>ADMINISTRATIVE &amp; GENERAL</b>							
2	Total A&G Expense	\$1,167,292	\$1,083,818	\$1,194,193	\$1,223,866	\$1,167,292	Audited Trial Balance Subgroup 4150
3	Distribution Labor Allocator	66.87%	66.97%	68.05%	65.53%	66.87%	GCEC - Direct Labor Distribution
4	Total A&G Assigned to Distribution	\$ 780,568	L3 * L2				
<b>DEPRECIATION EXPENSE</b>							
5	Distribution Depreciation	\$1,053,570	Audited Trial Balance Subgroup 416(acct#403.6 & 403.61)				
6	General Plant Depreciation	\$181,757	Audited Trial Balance Subgroup 416(acct#403.7)				
7	Distribution Labor Allocator	66.87%	L3				
8	Allocated General Plant	\$121,541	L7 * L8				
9	Total Assigned Depreciation	\$ 1,175,111	L5 + L8				
<b>DEBT SERVICE &amp; RETURN</b>							
10	Long Term Debt	\$18,218,498	Audited Trial Balance Group 2200				
11	Interest Expense	\$1,047,246	Audited Trial Balance Group 5100				
12	Allowed TIER	2.00					
13	Total Return	\$2,094,493	L11 * L12				
14	Distribution Rate Base Allocator	85.710%	Rate Base Allocator				
15	Distribution Return	\$1,795,190	L13 * L14				
16	Weighted Cost of Debt	5.748%	L11/L10				
17	Weighted Cost of Equity	1.050%	L18 - L16				
18	Rate of Return	6.798%	L15/L19				
19	Distribution Rate Base	\$26,406,786	Rate Base Allocated to Distribution				
20	Rate of Return	6.798%	L18				
21	Total Distribution Return	\$1,795,190	L19 * L20				
22	Total Distribution Revenue Requirements	\$5,867,183	L1 + L4 + L9 + L21				
23	Total System Energy Sales	179,012,535	ACC CY Annual Report Total Retail kWh Sold + Thatcher CY Sales				
24	Calculated Distribution Rate (\$/MWh)	\$33.00	L22 / L23 * 1000				
25	Five Year Average Thatcher Operating Costs	17.93					
26	Density Factor Discount	54.32%	L25 / L24 (Fixed at 54.32% of the life of the wheeling agreement)				
27	Thatcher Wheeling Rate	\$17.93	L26 * L24				
28	Settlement Factor	101.80%					
29	Settlement Wheeling Rate	\$18.25	L27 * L28				



**Formula Rate Implementation Protocols**

**Section 1      Annual Updates**

- a) GRAHAM's annual Distribution Revenue Requirements shall be determined and updated annually through the Formula Rate described in Exhibit C to the DW & OM Agreement using the Excel spreadsheet set forth as Exhibit C-1 (Annual Update). Such Annual Update shall be used to determine the rate for distribution wheeling and O&M services to be effective on and after January 1 of the next calendar year through December 31 of the same calendar year (the "Rate Year"). January 1 of each new calendar year is considered the "Publication Date".
- b) Beginning in 2015 and continuing each year thereafter, on or before December 1 of each year, GRAHAM shall calculate its Annual Distribution Revenue Requirements, producing the "Annual Update" in the form of Exhibit C-1 for the upcoming Rate Year, and shall make the results of the Annual Update available to THATCHER for its review.
- c) If December 1 should fall on a weekend or a holiday recognized by WECC, then the Annual Update shall be due to THATCHER on the next business day.
- d) Inputs to the Formula Rate are based on GRAHAM's books which reflect the USDA-RUS Uniform System of Accounts from the Financial Statement Adjusted Trial Balance as of the later of the date of GRAHAM's initial Formula Rate or the last day of the fiscal year ending September 30 of the year immediately preceding the effective date of the Annual Update to the Formula Rate.
- e) GRAHAM's Annual Update for the Rate Year:
  - i. Shall, to the extent specified in the Annual Distribution Revenue Requirements formula, (i) be based upon data properly recorded in GRAHAM's financial data for the most recent fiscal year and the books and records of GRAHAM, and (ii) shall provide a separate calculation determining

the amount (if any) by which the previous year's Annual Distribution Revenue Requirements were over (+5%)- or under (-5%)-recovered during the previous January 1 through December 31;

- ii. Shall, as and to the extent specified in the Formula Rate or through information requests pursuant to Section 2, provide supporting documentation for data not otherwise available that are used in the Annual Update or Formula Rate;
- iii. Shall provide notice of material changes in GRAHAM's accounting policies and practices from those in effect for the fiscal year upon which the immediately preceding Annual Update was based ("Material Accounting Changes");
- iv. Shall be subject to review and challenge, only in accordance with the procedures set forth in this Exhibit C-2, as to whether the input data are properly recorded, and as to the accuracy of the data and the consistency with the Formula Rate, including the terms and procedures in this Exhibit C-2, of the charges shown in the Annual Update;
- v. Shall not seek to modify the Formula Rate; and,
- vi. If the Annual Update shows the need for a change in the then current distribution wheeling rate within a band of plus or minus 5%, there shall be no change to the distribution wheeling rate for the next Rate Period. If the Annual Update shows the need for an increase or decrease in the then current distribution wheeling rate of more than 5%, then the distribution wheeling rate shall be adjusted consistent with the Annual Update and shall become effective beginning with the next Rate Period; however, if a change in the distribution wheeling rate requires approval of the ACC, and such approval has not been obtained by December 31 of the year preceding the Rate Period, then the change in the distribution wheeling rate shall become effective upon approval of the ACC, and the distribution wheeling rate shall be trued up through a surcharge or credit, as if the approved rate had been in effect for the entire Rate

Period. The charge or credit shall be reflected on the next monthly bill following the effective date of the new distribution wheeling rate.

- f) If THATCHER seeks changes in the application of the Formula Rate, it shall raise the matter with GRAHAM. If such changes to the application of the Formula Rate for the current Annual Update are not resolved within ninety (90) days following the Publication Date, THATCHER shall have the right to challenge such application of the Formula Rate, in the manner otherwise provided pursuant to this Exhibit C-2. The final resolution of any such challenge(s), including interest at the interest rate for disputed bills set forth in the DW&OM Agreement, shall be implemented through a true up for the fiscal year upon which the Annual Update is based. Any credit or surcharge to implement a true-up shall be included on the first monthly bill following resolution of any challenge.
- g) All data provided pursuant to and in accordance with the procedures set forth in this Exhibit C-2 may be used in any challenge to the Annual Update of the Formula Rate.

## **Section 2      Annual Review Procedures**

Each Annual Update shall be subject to the following review procedures (“Annual Review Procedures”):

- a) Each year, GRAHAM shall provide THATCHER with a copy of the Annual Update by December 1 and if requested will organize a meeting or conference call (“Customer Meeting”) during which GRAHAM shall present details about its Annual Update. If requested, the Customer Meeting will provide THATCHER the chance to seek information and clarifications from GRAHAM about the Annual Update. The Parties will in good faith try to resolve any issues prior to the “Publication Date”.
- b) If issues cannot be resolved prior to the “Publication Date,” THATCHER shall have up to sixty (60) days after the Publication Date (unless such period is extended with the written agreement of GRAHAM) to review the data (“Review Period”) and to notify GRAHAM in writing of any specific challenges, including challenges related

to Material Accounting Changes, to the application of the Formula Rate (“Preliminary Challenge”).

- c) THATCHER shall have up to thirty (30) days after each annual Publication Date (unless such period is extended with the written agreement of GRAHAM) to serve reasonable information requests on GRAHAM; provided, however, that THATCHER shall make a good faith effort to submit consolidated sets of information requests that limit the number and overlap of questions to the extent practicable. Information requests shall be limited to what is necessary to determine if GRAHAM has properly applied the Formula Rate and the procedures in this Exhibit C-2, to verify that the input data are properly recorded, and as to the accuracy of the data and the consistency with the Formula Rate of the charges shown in the Annual Update.
- d) GRAHAM shall make a good faith effort to respond to information requests pertaining to the Annual Update within fifteen (15) business days of receipt of such requests. GRAHAM may give reasonable priority to responding to requests that satisfy the practicable coordination and consolidation provision of Section 2.c.
- e) To the extent GRAHAM and THATCHER are unable to resolve Disputes submitted in accordance with these Annual Review Procedures, such Dispute will be discussed by senior representatives of GRAHAM and THATCHER. If the senior representatives are unsuccessful in resolving the Dispute, either party may submit the Dispute (“Formal Challenge”) to the GRAHAM Board of Directors, and the Formal Challenge shall be resolved as provided in Section 3 below.
- f) Preliminary Challenges or Formal Challenges, except those related to Material Accounting Changes, are not intended to serve as a means of pursuing other changes to the Formula Rate. Failure to make a Preliminary Challenge or a Formal Challenge with respect to an Annual Update shall act as a bar with respect to that

Annual Update but shall not bar a subsequent Preliminary Challenge or Formal Challenge related to a subsequent Annual Update.

### **Section 3      Resolution of Challenges**

- a) If GRAHAM and THATCHER have not resolved any Preliminary Challenge to the Annual Update within thirty (30) days after the Review Period (unless such period is extended with the written agreement of GRAHAM to continue efforts to resolve the Preliminary Challenge), THATCHER shall have the right to submit a “Formal Challenge” to GRAHAM’s Board of Directors, which shall be served on GRAHAM within ninety (90) days after the Publication Date by electronic service on the date of such filing.
- b) Any response by GRAHAM to a Formal Challenge must be submitted to the GRAHAM Board within thirty (30) days of the date of the filing of the Formal Challenge, and shall be served by electronic service on the date of such filing. The GRAHAM Board shall make a proposal to resolve the Formal Challenge within forty-five (45) days of receipt of the Formal Challenge. If the proposal does not resolve the Formal Challenge in a manner satisfactory to THATCHER, THATCHER may submit the Dispute to arbitration pursuant to Section 33.3, provided that, any request for arbitration of a Formal Challenge shall be submitted to arbitration pursuant to Section 33.3 within forty-five (45) days of receipt of a proposal by the GRAHAM Board to resolve the Formal Challenge or such right to arbitration shall be waived.
- c) In any proceeding initiated concerning the Annual Update or in response to a Formal Challenge, GRAHAM shall bear the burden of proving that it has reasonably applied the terms of the Formula Rate, and the applicable procedures in these Protocols, in that year’s Annual Update.
- d) Each Annual Update shall become final and no longer subject to challenge pursuant to these Annual Review Protocols on the passage of the ninety (90) day

period (or extended period, if applicable) for making a Formal Challenge if no such challenge has been made.

- e) Subject to Section 2.e., above, it is recognized that resolution of Formal Challenges concerning Material Accounting Changes may necessitate adjustments to the Formula Rate input data for the applicable Annual Update or changes to the Formula Rate for the applicable Annual Update to achieve an end result consistent with the original intent of the Formula Rate.

#### **Section 4      Changes to Annual Informational Filings**

Any changes to prior year audited financial results, data inputs, including but not limited to revisions to GRAHAM's USDA-RUS System of Accounts, or as the result of any agreed upon change to the Annual Update, or as a result of the procedures set forth herein, shall be incorporated into the Formula Rate and the charges produced by the Formula Rate (with interest) in the Annual Update for the next effective Rate Period. This reconciliation mechanism shall apply in lieu of mid-Rate Year adjustments and any refunds or surcharges.

# Example of Load Profiling Concept

		Jul-14					Aug-14					Sep-14					
		Two Month Adjustment	Estimated (July 2013 Actuals)	Energy Included Within Profile	Metered Actual Usage	Difference Forward Two Months	Two Month Adjustment	Estimated (August 2013 Actuals)	Energy Included Within Profile	Metered Actual Usage	Difference Forward Two Months	Two Month Adjustment	Estimated (September 2013 Actuals)	Energy Included Within Profile	Metered Actual Usage	Difference Forward Two Months	
		[a]	[b]	[c] = [a] + [b]	[d]	[e] = [d] - [b]	[a]	[b]	[c] = [a] + [b]	[d]	[e] = [d] - [b]	[a]	[b]	[c] = [a] + [b]	[d]	[e] = [d] - [b]	
8th Street Metering Point		Subtotal		153,682		(15,368)			174,266		(17,427)			126,677		(14,205)	
		Losses to Sub		4.6%		4.6%			4.6%		4.6%			4.6%		4.6%	
		Energy for Profiling		161,092					182,669					132,775			
									182,661		(8)			132,765		(10)	
		Total of Profiled Energy		161,100					182,671					132,796			
		Rounding Error		(8)					(10)					(31)			
MTR #																	
B798	Thatcher		1,872	1,872	1,685	(187)		1,956	1,956	1,760	(196)		(187)	2,205	2,018	1,985	(221)
CE4W287	Thatcher		138,480	138,480	124,632	(13,848)		158,400	158,400	142,560	(15,840)		(13,848)	138,480	124,632	124,632	(13,848)
H2000	Graham		-	-	-	-		-	-	-	-		-	-	-	-	-
E52302	Graham		-	-	-	-		-	-	-	-		-	-	-	-	-
TOTAL			153,682	153,682	138,314	(15,368)		174,266	174,266	156,839	(17,427)		(15,368)	142,045	126,677	127,841	(14,205)
Hour																	
	1	0.0012679	204					0.0010791	197				0.0011979	159			
	2	0.0011962	193					0.0010197	186				0.0011248	149			
	3	0.0011396	184					0.0009599	175				0.0010678	142			
	4	0.0011393	184					0.0009209	168				0.0010234	136			
	5	0.0011077	178					0.0009005	164				0.0009855	131			
	6	0.0011367	183					0.0009425	172				0.0009511	126			
	7	0.0013755	222					0.0010441	191				0.0009595	127			
	739	0.0016757	270					0.0015778	288				-	-			
	740	0.0015915	256					0.0015034	275				-	-			
	741	0.0015452	249					0.0014078	257				-	-			
	742	0.0014373	232					0.0013097	239				-	-			
	743	0.0012942	208					0.0012096	221				-	-			
	744	0.0011946	192					0.0010892	199				-	-			
		1.0000000	161,100					1.0000000	182,671				1.0000000	132,796			









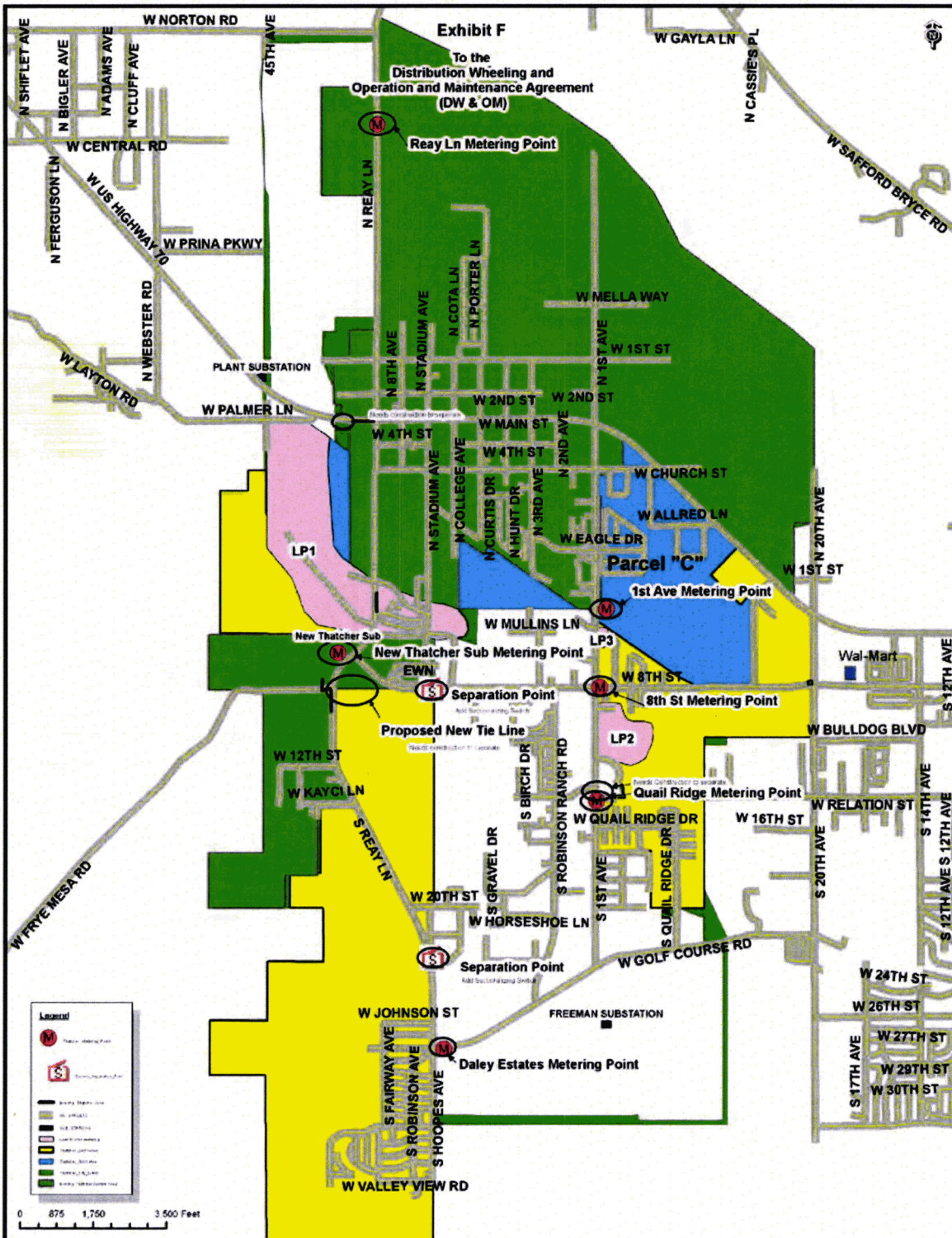




### List of Profiled Meters and Locations

METER_NO	Service Location	STATUS	LOAD PROFILE GROUP
H4771	4403 W PALMER LANE THATCHER		LP1
LGE1678	4313 W PALMER LN		LP1
PE1176	PALMER LANE S OF KEMPTON CHEM		LP1
H490	OFFICE	INACTIVE	LP1
H2000	385 S STADIUM AVE- YELLOW TRLR	INACTIVE	LP1
E53709	421 S ARENA WAY BY SILOS		LP1
H2050	479 S ARENA WAY		LP1
H4410	411 S ARENA WAY BY SILOS		LP1
H1740	4449 PALMER LANE		LP1
E53717	4433 W PALMER LANE		LP1
	869 N POWERHOUSE LN OFF		
E54859	PALMER		LP1
H1518	300 S LAUGHING QUAIL LANE		LP1
E54944	300 S REAY LANE THATCHER		LP1
LGE740	4375 W PALMER LANE		LP1
H1157	527 S 1ST AVE THATCHER	INACTIVE	LP3
E55026	467 S FIRST AVE THATCHER	INACTIVE	LP3
E52302	467 1ST AVE THATCHER	INACTIVE	LP3
LGE383	545 S 1ST AVE THATCHER		LP3
E53673	2945 W MICHAUD LN		LP2
E52106	2887 W MICHAUD LN		LP2
CE63W201	1017 S 1ST AVE		LP2
H1027	1ST AVE THATCHER BARN		LP2
H801	1005 S 1ST AVE GUEST HOUSE		LP2
SW062	1121 S 1ST AVE THATCHER		LP2
GE51256	2971 W MICHAUD LN		LP2
H5098	2946 W MICHAUD LN		LP2
E52317	2972 W MICHAUD LN		LP2
E54438	2913 W MICHAUD LN		LP2
E53599	2888 W MICHAUD LN LOT #4		LP2
E55221	2914 W MICHAUD LN LOT #3		LP2
LGE2419	NEXT TO 1005 S 1ST AVE		LP2





**EXHIBIT 2**

## LEGAL DESCRIPTION

### AREA 1

That Part of Sections 3, 10, and 11 of Township 7 South Range 25 East of the Gila and Salt River Meridian, Graham County, Arizona, described as follows:

BEGINNING at the Southwest Corner of the Southeast Quarter of said Section 3;  
THENCE North along the West Boundary of said Southeast Quarter, a distance of 1,220 feet more or less, to the Center line of Palmer Lane;  
THENCE East along said Center Line of Palmer Lane, a distance of 900 feet more or less, to the Center Line of the Eastern Arizona Railway;  
THENCE Southeasterly along said Center Line of Railway, a distance of 1,300 feet more or less, to the East Boundary of the West Half of the Southeast Quarter of the Southeast Quarter of said Section 3;  
THENCE South along said East Boundary, a distance of 470 feet more or less, to the Northeast Corner of the West Half of the East Half of the Northeast Quarter of said Section 10;  
THENCE South along the East Boundary thereof, a distance of 2,400 feet more or less, to the Centerline of the Highline Canal;  
THENCE Southeasterly along said Center Line of the Highline Canal, a distance of 780 feet more or less, to the East Boundary of said Section 10;  
THENCE continuing Southeasterly along said Centerline of the Highline Canal, a distance of 1,550 feet more or less, to the Centerline of Stadium Avenue;  
THENCE continuing along said Centerline of the Highline Canal, a distance of 790 feet more or less;  
THENCE South, a distance of 575 feet more or less, to the Centerline of the El Paso Natural Gas high pressure gas line;  
THENCE Northwesterly along said Centerline, a distance of 360 feet more or less, to the Centerline of the Frye Creek Drainage;  
THENCE Northwesterly along said Centerline of the Frye Creek Drainage, a distance of 740 feet more or less, to the Center Line of Stadium Avenue;  
THENCE South along said Centerline of Stadium Avenue, a distance of 430 feet more or less, to the Centerline of Ball Park Avenue;  
THENCE West along said Centerline of Ball Park Avenue, a distance of 1,235 feet more or less, to the Southeast Corner of the North Half of the South Half of said Section 10;  
THENCE West along the South Boundary of said North Half of the South Half of Section 10, a distance of 3,960 feet more or less, to the Southwest Corner of the Northeast Quarter of the Southwest Quarter of said Section 10;  
THENCE North along the West Boundary of the East Half of the West Half of said Section 10, a distance of 3,435 feet more or less;  
THENCE East, a distance of 660 feet more or less;  
THENCE North, a distance of 495 feet more or less, to the North Boundary of said Section 10;  
THENCE East along said North Boundary, a distance of 660 feet more or less, to the POINT OF BEGINNING.

**AREA 2**

That Part of Section 11, Township 7 South Range 25 East of the Gila and Salt River Meridian, Graham County, Arizona, described as follows:

BEGINNING at the intersection of the Eastern Arizona Railway and the South Boundary of the North Half of the North Half of the South Half of said Section 11, said intersection lying 660 feet South and 500 feet West, more or less, of the East Quarter Corner of said Section 11;

THENCE West along said South Boundary of the North Half of the North Half of the South Half of Section 11, a distance of 2,790 feet more or less, to the East Boundary of the Eastern Arizona College Campus;

THENCE North along said East Boundary, a distance of 1,685 feet more or less;

THENCE Southeasterly along a line parallel to the Centerline of the Eastern Arizona Railway, a distance of 640 feet more or less;

THENCE Northeasterly, a distance of 200 feet to the Centerline of said Eastern Arizona Railway;

THENCE Southeasterly along said Center Line of the Eastern Arizona Railway, a distance of 2,605 feet more or less to the POINT OF BEGINNING.

### **AREA 3**

That Part of Sections 1, 12, and 13 of Township 7 South Range 25 East of the Gila and Salt River Meridian, Graham County, Arizona, described as follows:

BEGINNING at the Southwest Corner of said Section 12;  
THENCE North along the West Boundary of said Section 12, a distance of 1,980 feet more or less, to the North Boundary of the South Half of the Northwest Quarter of the Southwest Quarter of said Section 12;  
THENCE East along said North Boundary, a distance of 125 feet;  
THENCE North along a line parallel to the West Boundary of said Section 12, a distance of 2,630 feet more or less, to the Center Line of the Union Canal;  
THENCE Northwesterly along said Center Line of the Union Canal, a distance of 145 feet more or less, to the East Boundary of said Section 12;  
THENCE North along said East Boundary, a distance of 440 feet more or less;  
THENCE East along a line parallel to the North Boundary of said Section 12, a distance of 455 feet more or less;  
THENCE North, a distance of 155 more or less, to the North Boundary of said Section 12;  
THENCE East along said North Boundary of said Section 12, a distance of 200 feet more or less, to the Southwest Corner of East Half of the Southwest Quarter of the Southwest Quarter of said Section 1;  
THENCE North along the West Boundary of said East Half, a distance of 765 feet more or less, to the Center Line of U.S. Highway 70;  
THENCE Southeasterly along said Centerline of U.S. Highway 70, a distance of 1,165 feet more or less, to the North Boundary of said Section 12  
THENCE continuing Southeasterly along said Centerline of U.S. Highway 70, a distance of 5,135 feet more or less, to the East Boundary of said Section 12;  
THENCE South along said East Boundary, a distance of 1,760 feet more or less, to the Southeast Corner of said Section 12;  
THENCE South along the East Boundary of said Section 13, a distance of 1,320 feet more or less, to the Southeast Corner of the North Half of the Northeast Quarter of said Section 13;  
THENCE West along the South line of said North Half, a distance of 2,640 feet more or less, to the North-South Mid-Section line of said Section 13;  
THENCE South along said Mid-Section Line, a distance of 3,960 feet more or less, to the South Quarter Corner of said Section 13;  
THENCE West along the South Boundary of said Section 13, a distance of 1,320 feet more or less, to the West Boundary of the Southeast Quarter of the Southwest Quarter of said Section 13;  
THENCE North along said West Boundary, a distance of 1,320 feet more or less, to the South Boundary of the Northwest Quarter of the Southwest Quarter of said Section 13;  
THENCE West along said South Boundary, a distance of 1,320 feet more or less, to the West Boundary of said Section 13;  
THENCE North along said West Boundary, a distance of 1,320 feet more or less, to the East-West Mid-Section Line of said Section 13;  
THENCE East along said Mid-Section Line, a distance of 720 feet more or less, to the Centerline of the Highline Canal;  
THENCE Northwesterly along said Centerline, a distance of 1,410 feet more or less, to the West Boundary of said Section 13;  
THENCE North along said West Boundary, a distance of 1,640 feet more or less, to the POINT OF BEGINNING.



#### **AREA 4**

That part of Sections 14, 15, 22, 23, 26, and 27 of Township 7 South, Range 25 East of the Gila and Salt River Meridian, Graham County Arizona, described as follows:

BEGINNING at the Northwest Corner of said Section 14;

THENCE East, a distance of 1,320 feet more or less, to the Northeast corner of the West Half of the West Half of said Section 14;

THENCE South along the East Boundary of said West Half of the West Half of said Section 14, a distance of 5,280 feet more or less, to the North Boundary of said Section 23;

THENCE South along the East Boundary of the West Half of the West Half of said Section 23, a distance of 5,280 feet more or less, to the North Boundary of said Section 26;

THENCE South along the East Boundary of the West Half of the West Half of said Section 26, a distance of 3,960 feet more or less, to the Southeast Corner of the Northwest Quarter of the Southwest Quarter of said Section 26;

THENCE West, a distance of 1,320 feet more or less, to the Southeast Corner of the North Half of the Southeast Quarter of said Section 27;

THENCE West, a distance of 2,640 feet more or less, to the Southwest Corner of said North Half of the Southeast Quarter of Section 27;

THENCE North along the North-South Mid-Section Line of said Section 27, a distance of 3,960 feet more or less, to the South Boundary of said Section 22;

THENCE North along the North-South Mid-Section Line of said Section 22, a distance of 1,320 feet more or less, to the Southeast Corner of the Northeast Quarter of the Southwest Quarter of said Section 22;

THENCE West along the South Boundary of said Northeast Quarter of the Southwest Quarter of Section 27, a distance of 1,320 feet more or less, to the Southwest Corner thereof;

THENCE North, a distance of 1,320 feet more or less, to the Northwest corner thereof;

THENCE East, a distance of 1,320 feet more or less, to the Southwest corner of the Northeast Quarter of said Section 22;

THENCE North, a distance of 1,320 feet more or less, to the Northwest Corner of the Southwest Quarter of the Northeast Quarter of said Section 22;

THENCE East, a distance of 1,320 feet more or less, to the Northeast Corner thereof;

THENCE North, a distance of 1,320 feet more or less, to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 22;

THENCE West along the South Boundary of said Section 15, a distance of 820 feet, more or less;

THENCE North, a distance of 782 feet, more or less;

THENCE East, a distance of 699 feet, more or less;

THENCE North, a distance of 1,720 feet, more or less;

THENCE East, a distance of 890 feet more or less, to the Centerline of Reay Lane;

THENCE Northwesterly along said Centerline, a distance of 2,900 feet, more or less to the North Boundary of said Section 15;

THENCE East along said North Boundary, a distance of 1,060 feet more or less, to the POINT OF BEGINNING.